

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION

4 **WITH CONFIDENTIAL PORTIONS**

5 IN RE:

6 GARLOCK SEALING TECHNOLOGIES, No. 10-BK-31607
7 LLC, et al,
8 Debtors.

9 VOLUME IX
10 THURSDAY, AUGUST 1, 2013

11 TRANSCRIPT OF ESTIMATION TRIAL
12 BEFORE THE HONORABLE GEORGE R. HODGES,
13 UNITED STATES BANKRUPTCY JUDGE

14 **WITH CONFIDENTIAL PORTIONS**

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P R O C E E D I N G S

(On the record at 9:30 a.m.)

THE COURT: Good Morning. Have a seat. I guess before we start I need to ask anybody who hadn't signed a confidentiality agreement to leave. Looks like everybody here has so -- it occurred to me that perhaps the easiest way to solve that problem would have been to just outlaw seat cushions.

(Laughter.)

THE COURT: That would have cleared the courtroom pretty quickly, I think. At least after a day or so. At any rate, are we ready to go?

(WHEREUPON, this portion of the transcript has been redacted pursuant to an order of the Court.)

MR. KRISKO: Thank you, Your Honor. We'll be continuing with the direct examination of Mr. John Turlik.

DIRECT EXAMINATION CONTINUES

BY MR. KRISKO:

Q. Yesterday, Mr. Turlik, when the court adjourned we were discussing some cases that you had identified, cases that you had overseen as regional counsel for Garlock in the 2000s period?

A. Yes, sir.

Direct - Turlik

1 Q. Okay. I'd like to continue with that subject as
2 we go forward.

3 Now, the last case we described was the Massinger
4 case?

5 A. Yes.

6 Q. And where was that case pending?

7 A. In Philadelphia.

8 Q. Okay. And is there another case from that
9 jurisdiction that you wanted --

10 A. Yeah. There was one last case that I wanted to
11 briefly touch upon.

12 Q. What case is that?

13 A. It's the Brennan case.

14 Q. What were the details or, excuse me, the
15 circumstances of that case?

16 A. That case was listed for trial in 2010 but was
17 settled, along with the previous two cases that I
18 discussed. Mr. Brennan worked in the Coast Guard as an
19 engineer and as an electrician.

20 Q. Like the other cases we discussed yesterday, have
21 you had an opportunity to review the discovery in the
22 Brennan case?

23 A. Yes.

24 Q. What did you learn?

25 A. First off, I looked at the discovery responses and

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1 found he had no personal knowledge of any exposure to any
2 companies he didn't sue. So, again, that would be the
3 bankrupt companies --

4 Q. Okay.

5 A. -- or would include bankrupt companies.

6 Q. And did you see similar answers in the cases we
7 described yesterday?

8 A. Yes, I did.

9 Q. Okay. Is this interrogatory number 23 that seeks
10 for plaintiffs to identify whether they had exposure to
11 products that were manufactured by bankruptcy companies
12 typical in your experience?

13 A. Yes.

14 Q. And -- okay. Well, have -- is there anything else
15 that you wanted to describe about the Brennan case that
16 -- based on the discovery in that case?

17 A. Well, I think the fact that we did not have any
18 information in the bankruptcy concerning the
19 interrogatory responses.

20 Q. Okay. Was that the state of the evidentiary
21 record --

22 A. Yes.

23 Q. -- on which Brennan was resolved?

24 A. Yeah. So no bankrupt entities were identified by
25 name. Okay? Now, what we would have needed to do then,

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1 this case was trial listed in the following year. So we
2 would have had to engage, then, in that costly
3 investigation to try to develop a case for trial. How
4 successful we would be we wouldn't know, but we did know
5 that that would have involved some real dollar costs.

6 Q. Okay. Now, Garlock has been able to obtain
7 additional information about the Brennan case in these
8 proceedings?

9 A. Yes.

10 Q. Have you had a chance to review that?

11 A. Yes, I have.

12 Q. What did you determine?

13 A. Just briefly. After the case was resolved there
14 were a number of bankruptcy trust claims filed and
15 ballots filed, and many of those involved thermal
16 insulation exposures that were not disclosed to us.

17 Q. Would this information have impacted Garlock's
18 resolution of the Brennan case?

19 A. I believe that it would have.

20 Q. Okay. All right. Now, the cases we've been
21 talking about, were they resolved in a group?

22 A. Yeah. So those three and, like, eight other cases
23 were all resolved together. But in just looking at those
24 three cases we saw what we believed we would be
25 encountering in most of those cases, and that was a

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1 reduction and a minimization of any thermal insulation
2 exposure testimony, and a lack of what we perceived would
3 have been full disclosure as to the names of the
4 companies.

5 Q. And how did those records that we've described
6 compare with your experience in the '90s?

7 A. I think that they were -- they -- the records were
8 similar to what we saw in the '90s, but the testimony we
9 saw in those cases that we just looked at was different
10 than the testimony we saw in the '90s.

11 Q. All right. Okay. Now, there's other cases you
12 wanted to discuss?

13 A. Yes. I looked at a few cases from New York City
14 that, again, were trial listed and resolved. The Homa
15 case is the first one I wanted to look at because, like
16 Massinger, it was a case that was settled during trial.

17 Q. Okay. Can you describe for the Court the
18 circumstances of the Homa case?

19 A. Yes. As I said, this was the first of a group of
20 cases that were going to be tried back-to-back-to-back in
21 New York City. Mr. Homa was in a the Navy and he worked
22 as a boiler technician.

23 Q. And did you look at the Homa discovery record?

24 A. Oh, yes, I did.

25 Q. Okay. What did that tell you?

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1 A. Well, first, as I typically do, I look at the
2 interrogatory answers. And in New York City there are
3 standard interrogatories that the plaintiffs must answer
4 and that's mandated by their CMO, their Case Management
5 Order. There's a couple of other areas where we asked
6 about it but, essentially, Chart A gives the
7 identification of the products that the plaintiff worked
8 with. When I look --

9 Q. I hate to interrupt. So, Chart A would be
10 provided as a response to those standard interrogatories?

11 A. Yes. It's a standard response that's attached to
12 the interrogatories. And basically, in one of the
13 interrogatory responses they say, "see Chart A."

14 Q. I think I interrupted your description. So,
15 please continue.

16 A. Yes. So, when we look at that, there's no
17 bankrupt companies identified in these interrogatory
18 answers.

19 Q. Okay. What else did you see in the discovery
20 record?

21 A. Well, we looked at the interrogatory -- not the
22 interrogatory, I'm sorry, at the deposition transcript.
23 And in Mr. Homa's deposition transcript he was asked
24 specifically about a whole lot of companies, but I just
25 pulled out sections here. He was asked about Armstrong,

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1 Eagle-Picher, Owens Corning and Pacor, as to whether he
2 had any knowledge of the name, any identification of
3 those products, and he ended up saying none. Owens
4 Corning, he knew the name but he did not remember seeing
5 them. Pacor is important --

6 MR. SWETT: Can we see the preceding question?
7 The first question is meaningless without seeing what
8 comes before.

9 MR. KRISKO: Which -- you're talking about --

10 MR. SWETT: Armstrong World Industries question
11 mark. You can't tell what he's being asked.

12 MR. KRISKO: Your Honor, these are excerpts from
13 trial exhibits that have been disclosed to the Committee.

14 THE COURT: We will let you deal with that on
15 cross-examination.

16 THE WITNESS: No. I was saying about Pacor.
17 Pacor is important. It's the -- in Philadelphia, where
18 one of his ships was and where he worked, Pacor is the
19 exclusive distributor of Johns-Manville products in the
20 Philadelphia area. So Pacor is synonymous with
21 Johns-Manville. Pacor also was bankrupt and had a trust.

22 BY MR. KRISKO:

23 Q. Okay. Now, does the Case Management Order in New
24 York City address whether plaintiffs must provide
25 information concerning bankruptcy trust claims?

Direct - Turlik

1 A. Yes. They not only have to provide it to us; they
2 have to actually file any claims they intend to file.
3 They have to file it in the Homa case no less than 90
4 days before trial.

5 Q. Okay. And I think you spoke a little bit about
6 this requirement in New York City yesterday. And just to
7 be clear, under this Case Management Order a plaintiff
8 must actually file trust claims?

9 A. Yes. And I have the excerpt from the CMO itself.
10 So it says that any plaintiff who intends to file a proof
11 of claim shall be filed no less than 90 days before
12 trial.

13 Q. Okay.

14 A. That's the important parts of that.

15 Q. Okay. So in looking at the Homa record, I
16 understand that trust claim information was sought in the
17 interrogatories --

18 A. Yes.

19 Q. -- in the depositions.

20 A. Yes.

21 Q. And then the Case Management Order also required
22 them to be filed.

23 A. Yes.

24 Q. Did Garlock do anything else to try to discover
25 trust claim information in Mr. Homa's case?

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1 A. Yes. Although we didn't have to, that's
2 self-executing, the plaintiffs are bound to do that
3 whether or not we ask. We also asked about trust filings
4 and we were told that there were none.

5 MR. SWETT: Objection. Hearsay.

6 THE COURT: Overruled. Go ahead.

7 BY MR. KRISKO:

8 Q. Did you have a chance to review the deposition of
9 Mr. Belluck?

10 A. Yes.

11 Q. Did he describe a conversation where Garlock asked
12 about the trust claims of Mr. Homa?

13 A. Yes.

14 Q. Okay. Okay. Well, so, at this point in the case,
15 had Mr. Homa identified any asbestos trust claims?

16 A. No, he did not.

17 Q. Okay. So what did -- did Garlock try to do
18 anything to try to establish Mr. Homa's exposure to trust
19 products?

20 A. Yes. We did what we did in many cases and that is
21 we embarked upon investigation. One of the things we did
22 was we retained Captain Wasson to look at the maritime
23 records. We were able to develop some of those records,
24 not -- they didn't mention Mr. Homa by name, but they
25 mentioned the ships he was on.

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1 Q. Okay. And how -- was that effort successful?

2 A. Well, we attempted to use it. We actually
3 confronted plaintiff's expert, Mr. Hatfield, who is a --
4 he's not a CIH, but he gives testimony about products.
5 We confronted him with the information about these
6 products being on the ship. I pulled a part of his
7 redirect examination which shows how, despite us having
8 those records, how little utility they are. And
9 basically, what happened was we -- his attorney was able
10 to redirect him and talked about him being shown
11 information about felted amosite and insulation, about
12 Unibestos.

13 And he went back to Mr. Homa's testimony and said
14 that Mr. Homa never testified about pipe covering on the
15 ship, block material on the ship. And what if that -- if
16 that is so, what relationship did these products being on
17 the ship have to Mr. Homa's exposure? And he said he
18 didn't think they did. They didn't have any relation to
19 his exposure. And then he went from there and pointed
20 out how the records pre-date Mr. Homa's service on that
21 ship by many years and how that impacts his
22 consideration. And he said possibly, I mean, things can
23 change. So, basically, we tried to establish those
24 products, but the plaintiff successfully refuted that.

25 Q. Did the plaintiff ever acknowledge exposure

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1 evidence that Garlock had developed through ship records
2 or through Mr. Wasson's investigation?

3 A. I don't believe so.

4 Q. You indicated to the Court that the Homa case was
5 actually settled at trial.

6 A. Yes.

7 Q. And I guess let's -- was this the discovery record
8 that and, I guess, the partial trial record that was in
9 the case when the Homa case was resolved?

10 A. Yes. There was identification of Babcock Wilcox
11 Worthington, that's a Flexitallic gasket at the
12 deposition, but we did not have the massive thermal
13 insulation identification. We did not have any
14 information that claim trusts were filed before or that
15 they were intended to be filed. And our use of ship
16 records were called into question.

17 Q. What -- you mentioned that there was some
18 identification of the Flexitallic product?

19 A. Yes.

20 Q. Is that an identification that is important to
21 Garlock's defense?

22 A. No. It's a spiral wound gasket. It's a low-dose
23 Chrysotile product.

24 Q. You were -- were you involved in the negotiations
25 of the Homa resolution?

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1 A. On the periphery I was not the direct negotiator,
2 although I did have conversations with them. I was
3 involved. And the plaintiff's firm knew I was involved
4 because I was copied on many e-mails.

5 Q. Okay. And what were the contents of those emails?

6 A. They were basically negotiations. However, I
7 pulled this e-mail out because it -- there's a section in
8 there that talks about how the plaintiff realizes that a
9 major motivating factor to us, along with risk, and he
10 talks about trial risk, but was the trial cost. And he
11 basically estimated that our trial costs to try each of
12 those cases would be \$2.3 million just to take these
13 cases to trial. And he was basically saying he doesn't
14 -- he doesn't -- isn't demanding much more than that. He
15 estimated that it would cost 50 to \$75,000 per case. I'm
16 not sure if he was talking about just our expert costs or
17 our trial costs, but I wish that it only cost us 50 to
18 \$75,000 to try those cases.

19 Q. Do you know how much the Homa case cost for
20 Garlock to try?

21 A. Yes. It was in excess of \$500,000 just for that
22 one single case.

23 Q. Okay. Who did -- did the record that we described
24 influence this settlement?

25 A. Yes. Yes. We had a case without the -- there was

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1 some -- some thermal insulation exposure testimony but it
2 was minimized. But what we did have was not the full
3 record of his exposures. So, again, it was diminishing
4 the effectiveness of our defenses. There was
5 acknowledgment of trial risk by the plaintiff's attorney
6 and trial costs. So that all came into play in terms of
7 settling the cases.

8 Q. You mentioned the Homa case was resolved with a
9 group of other cases?

10 A. Yes.

11 Q. Could you describe the nature of the resolution?

12 A. Yes. What we did, there was a total of 14
13 Mesothelioma and eight lung cancer cases in New York City
14 and New York state, and the total amount of that
15 settlement was \$2.6 million. Homa was part of that.
16 Another case that I'm going to talk about was a part of
17 that settlement.

18 Q. And was Homa the first case that was up for trial
19 in this group?

20 A. Yes, it was.

21 Q. Okay. All right. Now, Garlock has obtained
22 information about the Homa case as well?

23 A. Yes.

24 Q. Have you had an opportunity to look at that?

25 A. I have.

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1 Q. What did you see?

2 A. Well I saw that, despite being told that there
3 were no trust filings and despite there being, according
4 to the CMO, no intention to file trust claims, there were
5 various trust claims filed. And I think Your Honor can
6 see the list there. There were 11 of those filings were
7 based on sites where he said he had no exposure. And at
8 least eight of those trust claims were filed the day
9 after the settlement.

10 Q. Okay. So that would have been during the course
11 of the scheduled trial --

12 A. Yes.

13 Q. -- if it had continued?

14 A. Yes.

15 Q. Okay. Now what kind of information was contained
16 in the trust claims that Garlock discovered?

17 A. Well, in the Homa case there was some very useful
18 information that was not provided to us. For example, on
19 the Eagle-Picher claim form, the question that was filled
20 out was: Describe how the injured party was exposed to
21 Eagle-Picher products. And it said while he maintained
22 and operated boilers, removed and replaced asbestos-
23 containing materials. And named the Eagle-Picher
24 products to which the party was injured, and he has EPI
25 Industries. So it's an admission that he was exposed

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1 while he was working on the boilers and exposed to
2 Eagle-Picher.

3 Q. You've got some other trust claims that you've
4 identified?

5 A. Yes. Here's the Owens Corning trust claim where
6 he's -- it's stating -- answering the question, the site
7 or plant where his exposure occurred. And he lists the
8 Boston Navy shipyard and then the name of the ship, the
9 Springfield. I will point out he does say
10 "intermittently," but there is exposure that was not
11 disclosed.

12 Q. Okay. And here's another trust claim.

13 A. Yes. And this is the Philadelphia Navy shipyard.
14 And the question -- the statement is: The injured party
15 was exposed to Manville products distributed by Pacor at
16 the following sites, and it lists the Philadelphia Navy
17 shipyard. And what's important is all three -- all of
18 those were identifications that were specifically asked
19 of him at deposition.

20 Q. Okay. And when we saw a part of that deposition
21 testimony earlier?

22 A. Correct.

23 Q. Okay. How would this information have changed --
24 well, would this information have changed the dynamic of
25 the Homa case?

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1 A. Yes. Instead of having our efforts to show
2 exposure to thermal insulation products being shot down,
3 as it were, we would have had this evidence and it would
4 have made a much stronger case. It would have reduced
5 our risk because we would have been able to show those
6 exposures.

7 Q. We saw an excerpt of the examination of the
8 plaintiff's expert, Mr. Hatfield.

9 A. Yes.

10 Q. Would this kind of evidence have affected that
11 exchange?

12 A. Oh, yes. Absolutely. He would have been asked
13 about it, and he couldn't deny those exposures.

14 Q. Okay. You got a timeline of the development of
15 the Homa case. Why have you identified this depiction of
16 the case?

17 A. Yeah. I think because it shows how things evolved
18 in the events. And I think by seeing it graphically like
19 this it shows the prejudice to Garlock. Basically, what
20 happened, the case came into a referring firm in January
21 of 2008. In March of 2008, that referring firm completed
22 analysis -- an analysis of the case and transmitted it to
23 the lawyers.

24 Q. Let me pause you there. You know that how,
25 Mr. Turlik?

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1 A. Through the discovery that occurred during the
2 Garlock bankruptcy discovery.

3 Q. Was that a deposition of that referring firm?

4 A. Yes.

5 Q. Okay. Please continue.

6 A. The suit was filed in New York City at about the
7 same time. In May of 2008, the discovery answers that we
8 saw were served upon the defendants and which no trust
9 claims were identified. Later, at his deposition, he
10 admitted some exposure to bankrupt entities but not to
11 the mass. In November of 2008, one of the trust claims
12 was actually filed. So one was filed prior to the trial.
13 We were never given that trust claim.

14 In April 2009 we asked about the trust claims. We
15 were told that there would be none or were none. On May
16 14th, we settled the case. And on May 15th, the very
17 next day, the -- a number of trust claims were filed.
18 Then a few months later -- and we don't have exact dates.
19 But within a few months, an additional 14 trust claims
20 were filed. So a total of 23 trust claims were filed
21 that we were not provided.

22 Q. Okay. Okay. Now, you said that you reviewed the
23 deposition testimony of the two firms that were involved
24 in this case; is that correct?

25 A. Yes.

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1 Q. And did that testimony describe a decision to
2 delay the filing of trust claims?

3 A. Yes, it did.

4 Q. All right. You indicated that there are other
5 cases you wanted to discuss, Mr. Turlik?

6 A. Yes. There was another case that was lined up to
7 be tried after Homa. I'm not sure if it was the next one
8 up or where it was, but that was a case where the
9 gentleman was a Navy gunner's mate. His identification
10 -- he also worked, as I remember, at a sewage or water
11 treatment plant. His identification focused on gaskets,
12 packing, valves. He identified cement pipe and he
13 identified manufacturers Johns-Manville, who was
14 bankrupt, and Certainteed. So he did identify some of
15 his exposures.

16 Q. Okay. And have you had a chance -- has Garlock
17 obtained information about Mr. Beltrami's case as well?

18 A. Yes, we did.

19 Q. Have you examined that information?

20 A. Yes.

21 Q. What did it tell you?

22 A. Well, there were seven trust claims filed before
23 settlement. We should have gotten those. There were an
24 additional 17 trust claims filed on undisclosed
25 exposures. There are a number of ballots and 2019s filed

Direct - Turlik

1 also, but there were 24 claims forms filed that we were
2 not given.

3 Q. Okay. All right. There's -- are there any other
4 cases you wanted to describe?

5 A. Yes. I did want to point out why that's so
6 important --

7 Q. Okay. Please do.

8 A. -- especially in a state like New York. Your
9 Honor, the more exposures we get, the more identification
10 we get, the better our defenses are, especially the
11 low-dose defense because it shows the volume of exposure.
12 But in New York we also are allowed to put the bankrupts
13 on the verdict form. So what happens is our share of the
14 verdict is elevated, and that is something that we're
15 aware of when we settled these cases. Both that we --
16 that our low-dose defenses diminished, our Chrysotile
17 defense is somewhat diminished, and also that the verdict
18 form itself is going to be limited and, thus, expose us
19 to a potentially higher verdict. That causes a higher
20 trial risk and a higher settlement value.

21 Q. Okay. Well, thank you, Mr. Turlik.

22 Is there anything else you wanted to say about the
23 Beltrami case?

24 A. I think those are the highlights.

25 Q. Okay. Let's move to your next case. What case is

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1 this?

2 A. Again, I just wanted to talk about the Flynn case
3 very briefly. He was a -- it was a 2004 case that we
4 looked at. He was a boilermaker and ship fitter at the
5 Brooklyn Navy shipyard. So, again, an area where there's
6 going to be a lot of pipes; there should be a lot of
7 insulation. And we looked at his interrogatories. And
8 he not only -- well, he gave a flat denial of any
9 exposure.

10 Q. Okay. And I think -- are these the
11 interrogatories that you described?

12 A. Yes. So interrogatory 19 says, state whether you
13 were exposed, either directly through a coworker or
14 otherwise, to any bankrupt entities' asbestos-containing
15 materials or products, either mined, manufactured, sold
16 or distributed by a bankrupt entity. And the answer was
17 no.

18 Q. Okay. And is that the record that Garlock
19 resolved the Flynn case based upon?

20 A. That was a part of the record. Yes.

21 Q. Okay. And Garlock has obtained information about
22 the Flynn case after this proceeding?

23 A. Yes.

24 Q. Have you reviewed that?

25 A. Yes, I have.

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1 Q. What did you learn?

2 A. Well, despite that interrogatory answer, there
3 were 14 trust claims filed and then some additional
4 ballots and 2019s. But 14 trust claims.

5 Q. Would this kind of information have altered how
6 Garlock resolved the Flynn case?

7 A. I believe it would have because it would have,
8 again, given us two things. It would have given us
9 shares that -- of friable. So, very dusty thermal
10 insulation products. And it would have buffered up our
11 defenses especially.

12 Q. Mr. Turlik, I think we've now talked about six
13 separate cases that you saw --

14 A. Yes.

15 Q. -- in addition to the ones that were described in
16 part of your opinions that you offered yesterday?

17 A. Yes.

18 Q. With these six, would -- are they reflective of
19 the changes in the litigation environment that you
20 previously described?

21 A. Yes. I think they show how we were not given full
22 disclosure in many cases as to the full story of the
23 plaintiff's exposure to thermal insulation products.

24 Q. And if -- when considering information that
25 Garlock developed about these cases in this proceeding

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1 concerning trust claims, how does that information
2 compare to your past experience?

3 A. Well, in the period while those companies were
4 viable, we often got information about them in discovery.

5 Q. And would this kind of information alter how --
6 how would this kind of information impact Garlock's
7 assessment of cases?

8 A. Well I think as I've earlier disclosed, it would
9 strength Garlock's defenses. It would make Garlock's
10 defenses as they were in the past in states like New
11 York. It would affect the division of any verdict,
12 should we receive an adverse verdict.

13 Q. Okay. Now, I think you prepared one slide that
14 you wanted to summarize your testimony with?

15 A. Yes. So, basically, there's -- to sum up what
16 I've said. There have been reforms and changes in the
17 litigation since Garlock filed for bankruptcy. Some of
18 those changes are very, very important and would make a
19 more favorable environment for Garlock. And that
20 environment would cause, I believe, the litigation costs
21 to be reduced and, also, would affect the trial risk.
22 And when you affect the trial risk, you're affecting the
23 settlement values. So I think those changes are very
24 important and would not be reflected in many cases in the
25 pre-filing analysis of cases. So the world is getting a

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1 little bit better for Garlock and making it fairer,
2 things like the transparency and things like that. So
3 that would affect Garlock's values.

4 The second thing I want to point out is that the
5 testimony had changed. When the companies were in
6 bankruptcy, there was more identification after
7 bankruptcy. There was minimization and elimination of
8 those disclosures. Finally, -- not finally. But,
9 disclosures of bankruptcy filings would give juries a
10 full picture of the exposure.

11 Q. Right.

12 A. And it seems right that they have the full story
13 so that they can make a fair decision. Finally,
14 requiring that those disclosures, as Garlock's proposed
15 plan requests, would decrease Garlock's costs because we
16 would have that information. It would, as I've shown,
17 reduce Garlock's trial risk and, thus, their settlement
18 of values. So, basically, the big picture is that things
19 have changed. And if we are allowed to have those
20 exposures, Garlock's values would not be what they were
21 during the previous period.

22 Q. Okay. Thank you, Mr. Turlik.

23 Your Honor, I've got some exhibits that I'd like
24 to move for admission.

25 THE COURT: All right.

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1 MR. KRISKO: First, I'd like to move to admit the
2 slide show that is the demonstrative exhibit of
3 Mr. Turlik's testimony. It's been marked as GST-8000.
4 I'd move it into evidence for demonstrative purposes.

5 THE COURT: All right.

6 MR. SWETT: No objection.

7 THE COURT: Okay.

8 MR. SWETT: Except as to the 2019 material you
9 excluded yesterday. And I neglected to move to strike
10 that testimony, but you sustained my objection to that.

11 THE COURT: Okay.

12 MR. KRISKO: Secondly, Your Honor, I would move to
13 admit GST-7103 which is the revised -- excuse me, the --
14 I should say the July 17th corrected disclosure of the
15 opinions that Mr. Turlik made in connection with this --
16 with his testimony here today. Move for its admission.

17 MR. GUY: Do you have any copies for the other
18 side?

19 THE COURT: I think he put two of them down there.

20 MR. GUY: And the demonstrative?

21 MR. KRISKO: Yeah, I did. But I move to admit his
22 report, Your Honor, consistent with the basis for the
23 admission of other expert reports in this case.

24 MR. SWETT: With that, no objection.

25 THE COURT: All right. I'll admit all of that.

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1 MR. KRISKO: Finally, Your Honor, I have another
2 exhibit I'd like to admit. If I can approach the
3 witness?

4 THE COURT: Yes.

5 BY MR. KRISKO:

6 Q. Mr. Turlik, I've handed you GST-0403. Can you
7 identify that, please?

8 A. Yes. That is a series -- I believe they're all
9 from emails concerning negotiations for those New York
10 City cases we discussed. Included, I believe, in there
11 will be that section that we highlighted to the Court.

12 Q. Okay. The portion of the negotiations over the
13 Homa case and the trial list cases?

14 A. Yes.

15 Q. Okay. All right. Your Honor --

16 A. I don't think this involves the Flynn case. I
17 think it's just Homa and Beltrami.

18 Q. Okay. Very good. Your Honor, I move to admit
19 GST-0403.

20 MR. SWETT: This is the same exhibit marked in the
21 Belluck deposition?

22 MR. KRISKO: Yes.

23 MR. SWETT: No objection.

24 THE COURT: All right.

25 MR. KRISKO: I'll pass the witness now Your Honor.

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1 THE COURT: Okay. Mr. Swett, do you want to go
2 first?

3 **CROSS-EXAMINATION**

4 BY MR. SWETT:

5 Q. Good Morning, Mr. Turlik.

6 A. Good Morning.

7 Q. When were you asked to take on the role of an
8 expert in this case?

9 A. I believe in April.

10 Q. And that came --

11 A. You know what? I only have -- I don't know.

12 Q. What materials do you have up there with you?

13 A. I have my report dated July 17th. That's the
14 amended report. And I actually intended to have the
15 original report which would tell me the date. I have the
16 Power Point. I have -- let's see. I have a pad that has
17 the words "what was," and I don't know where that was
18 going. And I have a little bit of notes, and I have the
19 settlement package.

20 Q. The settlement package means the?

21 A. The last exhibit.

22 Q. Okay. Let me suggest to you that you must have
23 gotten the call in February?

24 A. I'll accept February.

25 Q. Just a couple of weeks before the reports were

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1 due. Do you remember that?

2 A. Not a couple weeks. Within a week, I believe.

3 Q. So, not longer than a week before the reports were
4 due you were asked to become an expert in the case?

5 A. Yes.

6 Q. Up until then, your role had been that of a fact
7 witness?

8 A. Yes.

9 Q. You had been deposed as a fact witness?

10 A. Yes, I was. Prior to the record I was also
11 deposed as an expert.

12 Q. And then after you rendered your report you
13 continued to work on the matter?

14 A. Yes.

15 Q. You received copies of several memoranda prepared
16 by the Robinson Bradshaw firm concerning the discovery of
17 several claimants, 15 or so designated claimants that
18 Garlock took in the bankruptcy case?

19 A. I don't know the number of claimants, but the memo
20 is -- that I received the memo is correct.

21 Q. And you received various materials in the nature
22 of memoranda, likewise reviewing the results of that
23 discovery that Garlock had addressed to its rule 30(b)(6)
24 designee?

25 A. I don't know specifically what you're talking

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1 about, but I received various memoranda.

2 Q. You received an account by Robinson Bradshaw of
3 the materials that it had discovered in the bankruptcy
4 case at a point-by-point exposition of what Robinson
5 Bradshaw thought was the significance of those materials?

6 A. I believe so.

7 Q. Okay. When you were deposed as a fact witness, do
8 you recall being instructed on several occasions to
9 decline to answer questions on the basis of
10 attorney-client privilege or the work product document?

11 A. I don't think I was instructed to do that. I
12 think there was an objection put into place and I decided
13 not to respond based on the attorney work -- well,
14 objection or privilege.

15 Q. As you put it, that advice came from Garlock's
16 attorney?

17 A. I don't remember who was there in the room with me
18 but, yes.

19 Q. Wasn't it Raymond Harris? This is now your fact
20 deposition?

21 A. Yes, I believe it was Ray Harris.

22 Q. This is the fact deposition of January 9 of 2013?

23 A. Yes.

24 Q. Let me read you a passage and see whether you
25 remember being asked the question and giving -- and

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1 receiving, however you might characterize, Mr. Harris'
2 interjection?

3 A. Okay.

4 Q. Question: "When you were determining what type of
5 non-Garlock exposures Mr. Homa was exposed to,
6 did you consult, for example, depositions of
7 individuals that worked at the Brooklyn Naval
8 Yard?"

9 Mr. Harris: "Objection. Calls for attorney
10 product."

11 Mr. Wayner: "Are you telling him not to?"

12 Mr. Harris: "Yes. That would be something in
13 connection with his work as a Garlock lawyer and
14 so we would instruct him not to answer"

15 Mr. Wayner: "Okay. And you're not going to
16 answer that question?"

17 Answer: "He's my lawyer."

18 A. Okay.

19 Q. So, that --

20 A. That doesn't refresh my memory but I will accept
21 that.

22 Q. You don't dispute that that exchange took place?

23 A. Not at all. Not at all.

24 Q. Do you recall, also, the various objections being
25 raised by Mr. Harris on the basis that the question

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1 sought to probe an attorney's impression?

2 A. Yes, I believe that there were objections like
3 that.

4 Q. Now the entire foundation of your opinion in this
5 case is closely bound up with your work in connection --
6 I'm sorry. Closely bound up with your work as a Garlock
7 lawyer.

8 A. Yes.

9 Q. And you have today and yesterday freely expounded
10 upon certain of your mental impressions.

11 A. I don't disagree with that.

12 Q. Let me see if you remember this passage. This is
13 the January 9th 2013 fact deposition. So this doesn't
14 have to do with the work that you later performed as an
15 expert but, rather, your historical involvement in the
16 matters being subjected to examination there.

17 Question: "How did you arrive at your negotiations
18 with Levy Phillips at these different numbers?
19 What was the process?"

20 Mr. Harris: "Oh. Hang on a second. We're going
21 to object that that information is confidential
22 and protected by attorney-client privilege and
23 attorney work product."

24 Mr. Wayner: "My --"

25 Mr. Harris: "And instruct the witness not to

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1 answer."

2 And you followed that instruction, I take it?

3 A. I don't remember, but I -- I suspect that you have
4 a section in which I did.

5 Q. But yesterday and today you have freely expounded
6 certain of your mental impressions and historical
7 recollections of the settlement process with regard to
8 various firms; correct?

9 A. I don't think to the firm that you -- that was --
10 that you read about. But, yes.

11 Q. Okay. You are aware, are you not, that, when
12 settling cases, Garlock was required sometimes to submit
13 to audit by insurers?

14 A. Not when settling but after settling.

15 Q. In order to satisfy the insurer that the claim
16 being resolved was a covered liability; correct?

17 A. I was never involved in that so I don't know the
18 details, but I know that there were some insurance
19 reviews.

20 Q. Now let me tell you that early on in the discovery
21 in this estimation proceeding, the Committee sought
22 access by document demand to Garlock's audit review
23 files. Make that assumption. Garlock objected on the
24 basis of relevance and on the basis that some sort of
25 joint interest privilege in the nature of the work

Cross - Turlik

1 product protection pertained to the dialogue between the
2 insurers and Garlock in the audit process. Assume
3 further that the instruction -- the objection was
4 sustained so that the Committee was not provided access
5 to what Garlock was telling its insurers when it wanted
6 to defend the bona fides of the settlement and get the
7 obligations covered. Are you with me so far?

8 A. Pretty much.

9 Q. Now you said yesterday that the claimant's
10 resistance to the production of trust claims forms
11 bespoke an awareness on their part that those disclosures
12 would help Garlock and hurt the plaintiff's cases. You
13 said that, didn't you?

14 A. Yes.

15 Q. Now if we were to apply the same logic, we would
16 say that Garlock's resistance to production of the
17 insurance audit files must mean that Garlock assumed that
18 those files would hurt its defense, its case in the
19 estimation proceeding, and help the Committee. Right?

20 A. I don't agree with that logic.

21 Q. Well that's because it's a great leap, isn't it?

22 A. No, it's not a great leap. There is a privacy
23 objection that is a legitimate objection. And once you
24 waive that -- or the privilege, not privacy, but
25 privilege objection. Once you waive that in any part,

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1 the other side would say it's waived for all parts. So,
2 they're really not relevant or related to each other.

3 Q. It's a rather drastic leap, isn't it Mr. Turlik,
4 to say that because an adversary resists certain
5 discovery demands, the Court should draw the inference
6 that the -- that the information, the disclosure of which
7 was resisted, would somehow be hurtful to the resister's
8 case?

9 A. It's one thing to resist with an objection, and
10 that's something we're allowed to do in this system and
11 let a judge decide. And in some of the cases that I
12 spoke about, the judge did decide that that information
13 should be given to us. But it's a completely different
14 matter when the resistance takes the form of denial of
15 something that exists.

16 Q. I'm talking about --

17 A. That's a complete different --

18 Q. I'm talking about open resistance to these demands
19 for production such as you have had with the Angelos firm
20 where the matter was objected to and brought before the
21 Court; a ruling was obtained and the ruling was complied
22 with. That's the legal process; right?

23 A. That's the legal process, but it's not part of the
24 legal process to deny something that exists, deny
25 something that you've already been told by a court to

Cross - Turlik

1 disclose. Now, in that instance, that shows that there's
2 a reason why you're not doing that. And that reason is
3 because you realize that that's going to be helpful to
4 the other side.

5 Q. So you want the judge to infer, based upon
6 objections and resistance to discovery demands by
7 Garlock, that the plaintiffs must have had something to
8 hide? That's what you're urging on the judge; right?

9 A. As long as you're including in resistance, the
10 resistance to full disclosure and to manipulating that
11 disclosure against the rules. Yes.

12 Q. Now one of the things you spoke about was
13 plaintiff resisting your efforts to alter Case Management
14 Orders so as to make the trust claims discoverable. Do
15 you remember that?

16 A. Yes.

17 Q. And so you -- and you argued that that bespeaks
18 knowledge on the part of the plaintiffs that, or their
19 lawyers, that the -- that the routine production of that
20 material would be hurtful to their case?

21 A. I didn't take that as the sole basis for my
22 opinion. It was part of all of the reasons for my
23 opinion, including not following the orders that were in
24 existence.

25 Q. I'm talking about changing the orders. You're

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1 aware, are you not, that in most jurisdictions in the
2 United States there is no Case Management Order requiring
3 you to produce your trust plan?

4 A. No. Most in jurisdictions there's not a heavy
5 asbestos litigation.

6 Q. In those where there are heavy, it is not uniform
7 that there is this Case Management Order requiring the
8 routine production of trust claims.

9 A. Correct. I never said that it was more uniform.
10 I said that it's occurring more and more.

11 Q. And there are even fewer jurisdictions that have a
12 Case Management Order that purport to direct the claimant
13 to assert trust claims before going to trial against the
14 solvent defendant.

15 A. I never said that there were a lot. I said that
16 since Garlock's bankruptcy there have been additions to
17 the list of jurisdictions that do provide for that.

18 Q. But it is not the norm, is it?

19 A. Well it's the norm in those jurisdictions. It's
20 not universal throughout the country. No.

21 Q. Indeed, the plaintiff is the master of the
22 plaintiff's case and decides when and whom to sue,
23 subject only to such things as personal jurisdiction,
24 statute of limitations and venue rules. Right?

25 A. I don't know that that's a hundred percent true.

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1 I think that there are some rules in courts that force
2 their whole case to be presented at once; that they can't
3 have multiple, multiple lawsuits filed. There's a rule
4 in some jurisdictions where it has to be in one case.
5 So, then they would have to sue everybody that they
6 wanted to sue at that time.

7 Q. The prevailing norm is as I described it, isn't
8 it?

9 A. I don't know that.

10 Q. You don't know?

11 A. But they -- the point is not who they sued. They
12 can't actually sue the bankrupt entities. The point is
13 that the evidence concerning those exposures are not
14 disclosed.

15 Q. Now, you're aware that there's been some
16 litigation concerning whether or not the trust claim
17 forms were more analogous to settlement demands than to
18 complaints; right?

19 A. I'm sorry. Repeat that.

20 Q. You're aware that there has been some litigation
21 concerning whether or not trust claim forms are more
22 analogous to settlement demands, settlement
23 communications, than they are to the filing of a
24 complaint.

25 A. I've heard that argument.

Cross - Turlik

1 Q. And courts have received and ruled on that
2 argument, and sometimes the defendants have prevailed?

3 A. Yes.

4 Q. In fact, you would agree with me, wouldn't you,
5 that since sometime in the middle 2000s at the very
6 latest, it has generally been true -- not always, but
7 generally been true, that courts have recognized the
8 trust claim forms to be discoverable along with the
9 supporting exposure information. Do you agree with that?

10 A. As far as you've gone? Yes.

11 Q. Okay.

12 A. Discoverable and also oftentimes admissible.

13 Q. But sometimes admissible only with respect to the
14 exposure information and not with respect to the
15 settlement information; right?

16 A. The amount of the settlement I don't know is ever
17 given to the jury.

18 Q. You're aware that in New York, for example, when
19 trust claims are produced, it is common practice for the
20 trust claims to be redacted of personal and settlement
21 information so that the defendant has the benefit of
22 exposure details but not of settlement communications.
23 Are you aware of that?

24 A. I'll accept that. I know that there are
25 redactions that occur. Specifically, I don't know what

Cross - Turlik

1 was redacted in New York, but I do believe you're
2 generally correct.

3 Q. So in a situation where the information
4 accompanying the trust claim form consists of exposure
5 information that was disclosed in the tort suit, there
6 would be no net gain for Garlock. Isn't that right?

7 A. Potentially.

8 Q. Okay. Did you have a role, sir, in selecting
9 which of the many cases Garlock has resolved that it
10 would subject to further scrutiny by designating them for
11 detention in the depositions of plaintiff's counsel in
12 this case?

13 A. I did not.

14 Q. You had no role whatsoever in that?

15 A. I was asked -- I was asked to give various
16 documents in various cases. I did not select the cases.

17 Q. Did you give any advice or guidance as to which
18 cases you thought should be selected?

19 A. I don't know that I knew that they were selecting
20 cases for the purposes that you're saying.

21 Q. Did you suggest that any particular law firm be
22 subjected to particular scrutiny?

23 A. No.

24 Q. You tried a hundred cases?

25 A. I started over a hundred cases.

Cross - Turlik

1 Q. For Garlock?

2 A. Yes.

3 Q. You supervised thousands of cases?

4 A. If you're talking about cases that were settled,
5 were tried, were prepared for trial? Yeah.

6 Q. During your tenure as the regional counsel for a
7 very large portion of the United States?

8 A. Geographically, not the largest portion of the
9 United States but a large portion.

10 Q. Ranging from Virginia and West Virginia and all
11 the way up to Maine --

12 A. Yes.

13 Q. -- and everything in between?

14 A. Yes.

15 Q. All right. And you have recounted for the judge
16 your review of six cases that were called to your
17 attention by Garlock?

18 A. Yes. I remembered those -- I remembered many of
19 those cases myself.

20 Q. And you purport to detect certain patterns in it,
21 but you have not, have you, undertaken any analysis to
22 put those numbers or those cases in any sort of
23 statistical context?

24 A. I have not done that.

25 Q. You have basically given impressionistic testimony

Cross - Turlik

1 based upon a few cherry-picked examples, haven't you?

2 A. No, no, no, no, no.

3 Q. You don't think so?

4 A. No. I gave details of those cases, but the
5 impressions that I had were based on my experience in the
6 '90s and then again in the 2000s.

7 Q. And that's experience that were denied access to
8 by claims of privilege when you were a fact witness;
9 correct?

10 A. I think when I was deposed as an expert witness
11 that privilege was removed. Whether you decided to go
12 into that or not is another matter.

13 Q. I'm not sure I agree with you at all about that,
14 but we'll check and let that pass for now.

15 It would have been a lot more advantageous to the
16 Committee to have free rein in exploring your experience
17 and what would become the foundation for your opinion had
18 you not been shielded by privilege back in December?

19 A. And I was not shielded at the second deposition.

20 Q. Which was in July, a few weeks before trial?

21 A. Well it had been scheduled before that and you had
22 continued it.

23 Q. Without the benefit of production of documents
24 from your files.

25 A. I don't know the reasons why you continued it.

Cross - Turlik

1 Q. Let's talk about your discovery practices and what
2 information was available to you when you were defending
3 cases and resolving cases in the 2000s.

4 A. Okay.

5 Q. One of the tools that you used to build your case
6 was to interview witnesses; right?

7 A. In many cases.

8 Q. Another tool you had was sending people into the
9 archives of various debtors?

10 A. Yes. And let me go back to the interviewing of
11 people. One of the problems we encountered was, first,
12 finding out who those people should be. And then when we
13 identified them, we often found that they were
14 represented by counsel and we were not allowed to talk
15 with them then.

16 Q. So, then you could depose them.

17 A. We had no idea what they were going to say. We
18 had no idea whether or not they had any knowledge of that
19 person.

20 Q. Not an unusual circumstance for a litigant to find
21 itself in, wouldn't you say?

22 A. Well I don't think you go to the telephone book to
23 search for witnesses.

24 Q. When you've got a witness you're not sure what
25 they're going to say until you depose them; right?

Cross - Turlik

1 A. The -- I think that that is true for the people
2 taking the deposition.

3 Q. Okay. Now, you also had a database in your firm
4 in which you collected many thousands of depositions
5 taken in past asbestos cases; right?

6 A. I don't know that it's "many thousands" but it's a
7 large number.

8 Q. And those are largely cases in which Garlock was a
9 participant?

10 A. Garlock was a participant in many of them and, I
11 would dare say, most of them.

12 Q. And you collected affidavits from past cases in
13 the same database?

14 A. I believe so.

15 Q. And you used that database to find out, with
16 respect to particular sites, what asbestos products had
17 been identified there in the past?

18 A. That is one of the purposes. We also used it to
19 -- let's say we knew that a person had a prior case, a
20 nonmalignancy case. We would use that to find his
21 deposition in that previous case so that we could find
22 out who he had sued, who he had testified about. And we
23 would use that -- if those people weren't present in the
24 case, we would use that to join them. We also used it if
25 there was a co-worker identified by the plaintiff.

Cross - Turlik

1 They'd typically list who the co-workers were who they
2 believed worked with them. So we would search those
3 archives to find out what those co-workers said. And in
4 those instances where it would be useful to us we would
5 depose those co-workers.

6 Q. Of course, you could make document requests of the
7 plaintiffs?

8 A. Yes.

9 Q. And if you were not satisfied with their
10 responses, you could move to compel?

11 A. Well it's difficult to go to a court and say he
12 said he doesn't have something and we want it anyways.

13 A. I think --

14 Q. If you felt the information was incomplete and you
15 had a reasonable basis for supposing that, you had
16 recourse to the court to enforce your demands; right?

17 A. We needed that reasonable basis, and the complete
18 denial doesn't give us that.

19 Q. Well there's not always complete denials.
20 Sometimes it was objections, wasn't it?

21 A. Sometimes it was. And like we showed in the
22 Massinger case, we did go to the court and got the relief
23 that you're suggesting.

24 Q. All right. You could also contact trusts for
25 claim information, couldn't you?

Cross - Turlik

1 A. At one point in time we could. And actually, I
2 did that in a case that I was on trial in and there was a
3 denial of any trust being filed and of exposure, I
4 believe, to that trust. We were able to contact that
5 trust, and they actually faxed over forms that
6 contradicted what we were told and what the court was
7 told. However, subsequent to that, rules were changed
8 that made it very difficult and expensive for us to get
9 those trust forms.

10 Q. You mean after that you'd have to serve a
11 subpoena? Go to that trouble and expense?

12 A. We would have to do that. Well, the trouble and
13 expense is that they were out of state subpoenas. What
14 we found when we did do that, and we did that on numerous
15 occasions, is we found that there was a delay in filing
16 those trusts. We so we were coming up empty time and
17 time again.

18 Q. And you've already acknowledged to me that in most
19 jurisdictions there is no law or rule compelling
20 claimants to bring their trust claims during the torts;
21 right?

22 A. Correct. But there are also very important and
23 very expensive to Garlock jurisdictions which did have
24 that requirement.

25 Q. And then again, you could issue subpoenas to the

Cross - Turlik

1 trusts. A lot of the trusts are Delaware corporations.
2 You could go from Philadelphia down to Wilmington and
3 serve subpoenas; right?

4 A. I would still have to get an out of state --
5 there's a procedure. But there's a lot of trusts. And
6 with the denial -- for example, in some of these cases
7 there was a denial of exposure at all to a certain work
8 site. So it would be very difficult to know where to go.

9 Q. Well, the Delaware Claims Processing Facility
10 operates the claims handling for some seven or eight or
11 nine trusts, doesn't it?

12 A. I don't know that to be true but I'll accept it.

13 Q. What about Verus? They have a whole number of
14 trusts that they manage with respect to claims processing
15 don't they?

16 A. I don't know that.

17 Q. You don't know?

18 A. I personally would not draft the subpoenas. I had
19 people that would do that.

20 Q. How long have you known anybody from the Robinson
21 Bradshaw firm as part of your network of Garlock counsel?

22 A. Probably somewhere in the 2000s, but I don't
23 remember the exact year.

24 Q. You came to understand, did you not, that the
25 Robinson Bradshaw firm had been tasked to pay close

Cross - Turlik

1 attention to the asbestos bankruptcies?

2 A. Yes.

3 Q. Turning to the subject of asbestos exposures. You
4 made -- when looking at a case even before discovery, you
5 made some assumptions based upon your experience and
6 common sense about what kinds of asbestos products people
7 in certain trades and places were likely to have
8 encountered; right?

9 A. Yes. For example, an insulator logically would be
10 working with insulation.

11 Q. So would a steamfitter in the plumbing and heating
12 business. That person would likely encounter thermal
13 insulation and sealing products; right?

14 A. Yes.

15 Q. Whereas a grinder or a welder at a place like
16 Bethlehem Steel, your supposition was that person is
17 likely to have exposures to thermal insulation, welding
18 rods and machinery. Right?

19 A. Yes.

20 Q. Now, you gave the impression on your direct
21 examination that all of the insulation products were
22 amosite.

23 A. And if -- no. If I gave that impression, I'm
24 sorry. I said we had to prove that they were amosite,
25 and one of the problems was that some of the insulation

Cross - Turlik

1 products weren't even asbestos. So to say that there was
2 insulation there wasn't enough to give us that base we
3 need for our defense. That's why we need the name of the
4 manufacturer. And I think I pointed this out that we
5 needed the name of the manufacturer so we could show that
6 it was asbestos, the type of asbestos, whether it --
7 whether it was an amosite, and then the amount of
8 asbestos by concentration in that product. So that -- if
9 you took that impression, I'm sorry but that's not what
10 my testimony was.

11 Q. Did that have to do with whether or not it was
12 asbestos-containing insulation? Did that have to do with
13 the period of time we're dealing with in the case? In
14 other words, if the exposures were sometime in the 1940s
15 it was likely to be asbestos?

16 A. "Likely" isn't the proof that we needed.

17 Q. I'm not asking you what the proof is. I'm asking
18 you whether, as a matter of fact, your supposition was it
19 was likely to be asbestos.

20 A. My supposition was that it was likely. But, also,
21 that had we just had that information, we would have met
22 with the attacks from the plaintiff's bar that we haven't
23 proven that it's asbestos.

24 Q. We're not talking about proof yet. We're talking
25 about your experience and your common sense assumptions

Cross - Turlik

1 when looking at a case cold.

2 A. Depending on where the product was being used. If
3 it was being used on a steam line in that period? Yes.

4 Q. You're also aware, aren't you, that upwards of 90
5 percent of the asbestos ever used in the United States
6 was calcion.

7 THE COURT: Chrysotile.

8 BY MR. SWETT:

9 Q. I'm sorry. Chrysotile.

10 A. That's why I paused.

11 Q. Thank you. I beg your pardon.

12 A. I don't know that but I've heard that.

13 Q. You're also aware, aren't you, that most
14 insulation products back in the day when asbestos was out
15 there were not pure amosite.

16 A. They had -- right. Some actually had crocidolite.
17 Some of the spray on insulation had crocidolite which is
18 --

19 Q. Some of Garlock's gaskets had crocidolite too?

20 A. A very, very small amount.

21 Q. Something like two percent of their output?

22 A. No. I think it was lower than that. By sales it
23 was one number; by actual output it was a different
24 number.

25 Q. You had some crocidolite cases for Garlock?

Cross - Turlik

1 A. Yes. Very few. Very, very few.

2 Q. You're aware, aren't you, that many of the
3 insulation products were a mixture of Chrysotile and
4 amosite, where the Chrysotile was the dominant component
5 part -- fiber?

6 A. I believe that's true. But the fact remains that
7 there were -- there was still a significant amosite
8 component that these men were being exposed to and, thus,
9 causing their illness.

10 Q. And there were also some insulation products that
11 were just Chrysotile and not amosite?

12 A. That's why we needed the name so that we could
13 show that.

14 Q. Now you testified that, to your view, co-worker
15 depositions and such taken from previous cases where a
16 given plaintiff was not a party are not admissible?

17 A. Yes.

18 Q. But Garlock's strategy in the 2000s involved
19 deploying expert witnesses.

20 A. Yes.

21 Q. And expert witnesses, such as you are now in the
22 role of, can rely on hearsay?

23 A. Yes.

24 Q. And you, indeed, have relied on a great deal of
25 hearsay.

Cross - Turlik

1 A. Not that much. I reviewed documents.

2 Q. Documents can be hearsay.

3 A. The statements of a plaintiff, for example, in his
4 trust filings are not hearsay.

5 Q. Robinson Bradshaw's memo to you compiling the
6 results of its discovery in this case is certainly
7 hearsay, isn't it?

8 A. Yes. But you didn't -- I did an independent
9 review of the documents.

10 Q. All 15 cases that were subject to deposition?

11 A. No. No, no, no.

12 Q. Just the six you testified about?

13 A. Correct.

14 Q. So back to this subject of hearsay being
15 admissible through experts. Garlock could and did give
16 ship specifications for asbestos products to its experts
17 as foundation for their opinions in trial testimony;
18 right?

19 A. We tried to do that. Yes.

20 Q. You have been sitting in the courtroom throughout
21 the case, haven't you?

22 A. Not throughout. Periodically.

23 Q. You've heard some parts of the science
24 presentations last week and the first part of this week?

25 A. Yes. I didn't -- very little. But, yes.

Cross - Turlik

1 Q. Now, in all of those lengthy debates between all
2 of those experts concerning whether or not Chrysotile
3 hurts you or whether or not the low-dose defense is
4 scientifically valid, did you hear one expert call out
5 the name of a particular amosite product?

6 A. Like I said, I wasn't here the whole time. So I
7 would give a misleading answer if I said yes or if I said
8 no.

9 Q. When you were here.

10 A. I don't remember hearing a specific product. Not
11 to say that it wasn't done, but I think they were talking
12 about things different than I was talking about.

13 Q. They were talking about the scientific foundation
14 of the low-dose defense that does not depend -- the
15 scientific foundation of the low-dose defense does not
16 depend upon the identification of a particular asbestos
17 containing product, does it?

18 A. Well if you're --

19 Q. No. Answer the question.

20 A. The scientific portion does not. But if what
21 you're doing is trying to show exposure, then it does.

22 Q. Now, you started in practice, in private practice,
23 at the Goldfein firm in 1989?

24 A. Yes.

25 Q. You're aware that asbestos personal injury

Cross - Turlik

1 litigation had been going on for 20 years -- more than 20
2 years by that time?

3 A. I don't know 20 years, but much more -- more than
4 a decade.

5 A. I don't know. I don't remember when --

6 Q. You're aware -- you called it a "bankruptcy surge"
7 in the 2000s. Are you aware that there had been
8 bankruptcy surges in the past?

9 A. No.

10 Q. Do you know how much market share asbestos-
11 containing products Johns-Manville had when it was in the
12 system?

13 A. I don't know the exact number but I know they were
14 a majority.

15 Q. It was far more than any other single company's
16 share in the United States, isn't that so?

17 A. I assume. I don't know.

18 Q. You never had any problem when you looked for it
19 finding Manville product at a given site, did you?

20 A. You could find them often at a site. We couldn't
21 necessarily put them with the plaintiff.

22 Q. Did you ever go to Manville repository for
23 documents?

24 A. I have not, but I know of people who have. And I
25 know of people in my employ who have or at least --

Cross - Turlik

1 Q. You know the repository?

2 A. -- if they didn't go physically, they were able to
3 access documents.

4 Q. The Manville Trust has possession of and makes
5 available the entire cache of Manville documents
6 pertaining to its asbestos products and its asbestos
7 litigation; right?

8 A. I don't know that.

9 Q. As you entered practice, you're aware that Celotex
10 was in the process of filing bankruptcy in 1989?

11 A. I don't know that they were in the process, but I
12 do remember that they did.

13 Q. You remember, over the course of the '90s, some
14 other big bankruptcies? Eagle-Picher?

15 A. Yes. I think that I disclosed that during my
16 testimony.

17 Q. National Gypsum?

18 A. I disclosed that in my report that there were
19 other bankruptcies. Prior to what others -- I can't take
20 credit for coining the phrase surge, but that others have
21 called a surge. I did state that there were others prior
22 to the surge.

23 Q. Raymark?

24 A. I'm not sure if that was before or after -- that
25 was before the surge, I believe.

Cross - Turlik

1 Q. And Keene.

2 A. I believe Keene was before the surge.

3 Q. Among others. Now, do you have any evidence that
4 the settlement values of any solvent defendant went down
5 after any of those bankrupts was reorganized and began to
6 pay claims through trusts?

7 A. I haven't looked at that.

8 Q. Have you made any systematic effort to determine
9 whether in those jurisdictions that have Case Management
10 Orders that call for the disclosure, or even the filing
11 of trust claims before going to trial against solvent
12 defendants have you made any systematic study of the
13 claim values emerging in those jurisdictions under those
14 practices?

15 A. Not a -- no.

16 Q. You are aware though, aren't you, that the
17 litigation going back into the '60s has never been a
18 static matter? There have been lots of changes in the
19 litigation over time, isn't that so?

20 A. Yes. But I pointed out that despite those changes
21 that the evidence shouldn't change.

22 Q. Well the 1990s were not a reprise of the 1980s or
23 late '70s when Manville was in the system, were they?

24 A. Manville actually was trying cases in the '90s. I
25 don't understand the mechanism that put them back into

Cross - Turlik

1 the litigation, but there was a time they were in the
2 litigation.

3 Q. Let me suggest to you that that's because
4 Manville's share of the problem, as it were, was so large
5 that the Manville Trust conceded, as part of its plan,
6 that it was a tortfeasor against whom liability would lie
7 if medicals and exposure were -- evidence were provided.

8 A. I don't know that.

9 Q. Continuing with this -- the way in which -- the
10 various ways in which the litigation has changed over
11 time. Have you read the Borell case?

12 A. I've read a lot of cases. I'm horrible with
13 names.

14 Q. Let me remind you this is the case decided by
15 Judge Wisdom in 1973 out of the Fifth Circuit that was
16 the first to apply the doctrine of strict liability in
17 tort under Section 402(a) second of torts to asbestos
18 personal injury litigation. Does that ring a bell?

19 A. I don't know that I read that case.

20 Q. You're aware that at a certain point in the
21 evolution of the litigation the focus was on cases
22 involving severe asbestosis?

23 A. I don't know that.

24 Q. You do know, however, that severe asbestosis is a
25 disease that everybody knows requires massive exposures

Cross - Turlik

1 to asbestos.

2 A. I will agree with that.

3 Q. And then in the 1990s the focus came to be on very
4 large numbers, vast numbers of claims for nonmalignant
5 diseases or conditions where there was a rampant dispute
6 as to whether or not there was actually anything
7 medically wrong with these people. Do you remember that?

8 A. There were a large number of cases like that.

9 Q. That was largely a phenomenon of the 1990s, wasn't
10 it?

11 A. That's where I started -- I don't know if it was
12 a phenomenon of the '90s, but I observed it in the '90s.

13 Q. That was the focus of the litigation when you
14 started out?

15 A. There were those cases, there were Mesothelioma
16 cases, there were -- they were all there.

17 Q. There were lots of disputes about how you measure
18 impairment in nonmalignant cases?

19 A. Yes.

20 Q. And Mesothelioma was much less prominent in the
21 overall picture than it is today, isn't that true?

22 A. In terms of the number of cases, you're correct.
23 There were more nonmalignancies in the trial system than
24 there were --than there are now. In fact, many
25 jurisdictions don't allow the nonmalignancies to be

Cross - Turlik

1 tried.

2 Q. One of the phenomenon of the 2000s -- late '90s,
3 early 2000s and beyond, has been the rising prominence of
4 Mesothelioma in the liability picture of the litigating
5 defendants; correct?

6 A. There are -- the predominant kind of case now is a
7 Mesothelioma case is, if that's what you're asking.

8 Q. The Court has now heard a lot of evidence of the
9 plaintiff's side of debate as to low exposures to
10 asbestos being capable of causing Mesothelioma.

11 A. I haven't been here the whole time. I'll take
12 your word that that's the evidence you tried to present.

13 Q. Don't take my word for it. You're fully aware,
14 are you not, that one -- that the first phase of this
15 estimation proceeding was given over to a lot of debate
16 among experts as to how Mesothelioma comes about and
17 whether or not low emissions can be causative?

18 A. I know that that's part of the science case, and
19 the science case -- there's been evidence about it.

20 Q. Okay. Now the vast majority of the cases that you
21 supervised as regional counsel settled; correct?

22 A. Yes.

23 Q. The settlement agreements were often completed
24 before you would have worked up the cases, isn't that so?

25 A. Often. Yes.

Cross - Turlik

1 Q. That was true throughout the '90s when you --
2 before you were regional counsel?

3 A. Yes.

4 Q. And it was true after 2003 when you became
5 regional counsel?

6 A. Yes. That's one way we were able to restrain
7 costs.

8 Q. Sometimes, indeed, you settled cases when no
9 complaint had been filed.

10 A. That is true.

11 Q. And Garlock frequently engaged in group
12 settlements of various kinds?

13 A. That is true.

14 Q. In fact, it was one of Garlock's objectives, was
15 it not, to get plaintiff's counsel, particularly a
16 prominent firm, into group deals?

17 A. I wouldn't say primarily prominent firms. I think
18 the cost was the cost no matter what firm was doing it.
19 And a cost effective method to control the litigation was
20 to settle those cases at low numbers prior to expending a
21 lot of costs.

22 Q. And foregoing discovery?

23 A. Again, when the costs were right, when the price
24 of the case was right, yes.

25 Q. And not concerning yourself with what exposures

Cross - Turlik

1 the plaintiffs in those groups might have had to other
2 products.

3 A. On those low value cases? Yes. But what I was
4 talking about were high value cases.

5 Q. You're aware of the Weitz and Luxenberg
6 arrangements that have been in place with Garlock since
7 1993?

8 A. I'm aware there was a settlement agreement with
9 them.

10 Q. Would you call a \$200,000 payment a low price?

11 A. I would call five and \$10,000 payments low prices.
12 And that settlement agreement called for those type of
13 numbers also.

14 Q. For living mesos in New York City?

15 A. There were mesos that were at that level. I think
16 if it was on a certain -- there were some that were
17 \$200,000, like you say, and there were some that were a
18 lower number. The key, I think, was the status of the
19 case in the litigation.

20 Q. Excuse me just a minute. While my colleague
21 searches for the material, we'll continue.

22 A. If you're talking about cases on the extremis list
23 and those would be living meso plaintiffs, I believe
24 you're correct those were paid. But that wasn't the
25 whole agreement. The agreement called for other cases to

Cross - Turlik

1 be settled at much lower numbers.

2 Q. That was essentially an administrative deal?

3 There was no litigation of those cases was there?

4 A. Very infrequently there was litigation. But the
5 idea of that deal was to eliminate both our risk and our
6 transaction cost.

7 Q. So Garlock altogether stood down in discovery of
8 those cases?

9 A. In those cases covered by that? Yes.

10 Q. And that was a case -- a deal that led to the
11 resolution over almost a 20-year period of many thousands
12 of claims, isn't that so?

13 A. Yes. And the majority of those were not at that
14 level of the \$200,000.

15 Q. The majority weren't mesos, were they?

16 A. The majority were not. But there were a large
17 number of mesos settled at lower values.

18 Q. They had different values for upstate, didn't
19 they?

20 A. True.

21 Q. They had different values for nonexigent cases.
22 That is where the victim had died.

23 A. Yes.

24 Q. They had different values for the non-New York
25 cases all together, didn't they?

Cross - Turlik

1 A. I believe that is so.

2 Q. That's because jurisdiction is a material factor
3 in pricing a case for settlement, isn't that so?

4 A. That can be so.

5 Q. Were you aware of the Weitz Luxenberg deal in
6 1993?

7 A. I don't know that I was.

8 Q. Well then let's go to the re-up of that
9 arrangement, as it were, in November 20, 2003.

10 A. Could I see the entire document please?

11 MR. SWETT: May I approach?

12 THE COURT: Yes.

13 BY MR. SWETT:

14 Q. This is November 2003. This is a letter from your
15 firm to Charles Ferguson at Weitz and Luxenberg. Let's
16 scroll down first paragraph?

17 A. Just so we're clear, it was not a letter I
18 drafted.

19 Q. No. I understand that. We'll get to the
20 signature. Let's go to the bottom and see who signed it.
21 Next page. Next page. This is William Mahoney's
22 signature. He's your partner?

23 A. Correct.

24 Q. Okay. Let's go back up to the first paragraph.

25 Now this is presented in this letter as a two year "peace

Cross - Turlik

1 agreement." Do you see that?

2 A. Yes.

3 Q. In fact, this arrangement remained in place up
4 until the bankruptcy case. Are you aware of that?

5 A. With some alterations.

6 Q. Paragraph one. Garlock, etcetera will pay up to
7 \$25 million in 2004 and \$25 million in 2005 to settle
8 asbestos related claims filed by your firm. It is
9 contemplated that the submitted claims will include the
10 New York City in extremis dockets from November 2002, May
11 2003, November 2003 and May 2004. The balance of the
12 claims submitted will include "inventory" cases from New
13 York City, upstate New York and out of state cases.
14 Assuming the submission of an adequate number of
15 qualifying claims, Garlock is prepared to fund the entire
16 \$25 million for 2004 by June 15, 2004 and the 2005, \$25
17 million payment by June 1, 2005. The agreement
18 contemplates no trials involving our client through
19 November 15, 2005. Trial set cases in non-New York City
20 venues will also be included in this agreement. Do you
21 see that?

22 A. Yes.

23 Q. So this was an arrangement designed to take all of
24 Weitz and Luxenberg's cases against Garlock off a trial
25 track and into this private arrangement for resolution?

Cross - Turlik

1 Correct?

2 A. Yes.

3 Q. I'll just keep reading. In establishing an
4 appropriate claims base in consideration of the annual
5 \$25 million payments, the parties agree on the following
6 valuation structure. For "in extremis docket" cases, an
7 assigned value of \$200,000 per Mesothelioma and \$75,000
8 for lung or other asbestos-related cancers. For
9 inventory cases -- let's stop there. What does the term
10 "inventory cases" have meaning to you?

11 A. Yes. That would be Mesotheliomas. Mesotheliomas
12 and other diseases that are not on the extremis docket.

13 Q. For inventory cases filed in New York City with
14 city exposures, an assigned value of \$10,000 per case.
15 For inventory cases for non-New York City venues an
16 assigned value of \$5,000 per case. For trial set upstate
17 New York cases of malignancies, the assigned value of
18 \$25,000 per Mesothelioma and \$7,500 for lung and other
19 cancers. We understand the Weitz firm reserves the right
20 to divide the funds among its clients at amounts that are
21 at variance with the assigned values described there.

22 Let's stop there. Are you aware Weitz and
23 Luxenberg submitted its cases to a Special Master for the
24 fixing of values among the aggregate sum -- to be paid
25 out of the aggregate sum to be provided by Garlock?

Cross - Turlik

1 A. No.

2 Q. Garlock/Garrison reserves the right to internally
3 allocate claims at variance with the numbers assigned
4 above. Garlock contemplates our agreement will guarantee
5 a minimum number of settled cases per year. For
6 instance, if the extremis cases submitted are valued at
7 \$10,300,000, a minimum of 1,470 inventory cases will be
8 settled for the \$14.7 million balance. Is that in
9 accordance with how this deal worked?

10 A. Generally, yes. So basically, what it's saying is
11 that Mesothelioma claims could be paid at \$200,000 if
12 they met certain criteria, \$10,000, and \$5,000.

13 Q. This paragraph describes the scope of the releases
14 that would be required. They include Fairbanks Morse
15 Engine and Fairbanks Morse Pump. Do you see that?

16 A. I see that.

17 Q. Also Coltec and EnPro. Do you see that?

18 A. I see it.

19 Q. Here is a paragraph concerning settlement packets.
20 This is the information that Weitz and Luxenberg was
21 required to submit in order to qualify cases under this
22 arrangement; correct?

23 A. Yes.

24 Q. So this is not a situation where there was money
25 for the asking. They had to present certain particulars

Cross - Turlik

1 in order to be eligible to have a certain claim resolved
2 under this arrangement.

3 A. Yes.

4 Q. One of the requirements we'll just -- I'll just
5 read it out beginning with the quotation. The settlement
6 packets submitted will contain the following qualifying
7 information. Number one, exposure. Plaintiff or
8 plaintiff's decedent worked with or around asbestos-
9 containing products manufactured or sold by Garlock
10 entities. Do you see that?

11 A. Yes. Wait. Actually, what line?

12 Q. Can you see it on the copy you have there?

13 A. Okay. Okay.

14 Q. That was always a requirement in any Garlock
15 settlement, wasn't it?

16 A. I believe so.

17 Q. But the nature and quality of the evidence that
18 Garlock would accept would depend on the deal; isn't that
19 so?

20 A. The deals often specified what had to be
21 presented, and I believe they changed deal to deal.

22 Q. And if the claimant didn't come up with that
23 requirement, the claimant couldn't get paid under the
24 deal.

25 A. Correct.

Cross - Turlik

1 Q. But that claimant could always proceed to trial.

2 A. Yes. But if he couldn't come up with that
3 exposure information, I don't know that he really could
4 proceed to trial because he wasn't exposed to Garlock.

5 Q. He might find it later.

6 A. If he found it, then he would submit it under the
7 deal. I did have that happen in some of the deals that I
8 administered where a case was rejected because of no
9 exposure, and they were able to come up with exposure
10 later.

11 Q. It wasn't unusual for the record in a case to
12 change over time, was it?

13 A. Generally -- that was a rare occurrence.

14 Q. Cases are built over -- they don't come into the
15 lawyer's office all packaged and ready to go.

16 A. I'll accept that.

17 Q. The plaintiff's lawyer has to invest effort in
18 putting together the case.

19 A. They do. But when the plaintiff, as we saw in
20 some of the cases I presented, gives them that
21 information early, there's less work that needs to be
22 done.

23 Q. Now let's take a deal which, for whatever reason,
24 was relatively relaxed in its exposure requirement
25 component. Garlock, of course, had discretion to settle

Cross - Turlik

1 a case on what would be much less than trial ready
2 exposure evidence, isn't that so?

3 A. I guess we had discretion to do whatever we wanted
4 to do.

5 Q. And Garlock did not regard itself as doing any
6 injury to codefendants if it decided to settle a case on
7 evidence that was less robust than it would expect to see
8 from a plaintiff at trial.

9 A. I don't think Garlock considered that one way or
10 another.

11 Q. Likewise, you acknowledge that trusts are entitled
12 to settle cases on whatever exposure criteria are
13 approved in the bankruptcy plan and trust distribution
14 procedures giving rise to that trust.

15 A. That's not what I presented. I presented cases in
16 which there was strong admission.

17 Q. Please just answer the question.

18 A. I don't know how that works. I do know that the
19 trusts call for exposure evidence.

20 Q. Just as Garlock always required exposure evidence.

21 A. Yes.

22 Q. But that doesn't mean that the trust must consist
23 on evidence of the nature and quality that would get to a
24 jury and persuade the jury to hit Garlock with a
25 judgment.

Cross - Turlik

1 A. But it does require exposure.

2 Q. Garlock's motivation in varying the exposure
3 requirements was related, wasn't it, in its private
4 settlement arrangements was related to its sensitivity to
5 cost?

6 A. But what the person presented to us doesn't mean
7 that he wasn't exposed to our product. It means that he
8 was exposed to our product.

9 Q. Please answer the question. The variation in the
10 rigor of exposure information that Garlock required from
11 deal to deal, the variations in that, were closely
12 related, were they not, to Garlock's sensitivity to
13 costs?

14 A. The decision to enter into these settlements was
15 related to cost, but there was always the decision that
16 there be exposure evidence presented to us.

17 Q. And you understand, do you not, that the trusts
18 are limited funds --

19 A. Yes.

20 Q. -- with responsibility to attend to many, many
21 thousands of claims?

22 A. I will accept that.

23 Q. You won't criticize the trusts for likewise being
24 sensitive to cost.

25 A. They probably should be.

Cross - Turlik

1 Q. Sometimes in these group deals you negotiated the
2 deal, and the dollars were allocated to particular
3 plaintiffs only later. That's what this Weitz and
4 Luxenberg arrangement is like, isn't it?

5 A. Apparently.

6 Q. You always got releases in connection with
7 settlements.

8 A. Yes.

9 Q. The scope in the releases always included Garlock
10 affiliates except sometimes Anchor; isn't that right?

11 A. No. That was something we tried, and in this deal
12 it was.

13 Q. You didn't always get that.

14 A. Correct.

15 Q. But you always got releases for Garlock?

16 A. Yes.

17 Q. And you never included in the release any company
18 that was not affiliated with Garlock.

19 A. Correct.

20 Q. And you never purported to pay any unaffiliated
21 entities' share of a liability.

22 A. In our settlement correct.

23 Q. It was not uncommon, was it, for Fairbanks Morse
24 Pumps and Fairbanks Morse Engines to be identified by the
25 plaintiff or the plaintiff's witnesses in a Garlock case.

Cross - Turlik

1 A. Correct.

2 Q. Did Fairbanks Morse and Fairbanks Engines
3 contribute to settlements?

4 A. I don't believe so.

5 Q. Now after you settled a case, whether on a one off
6 arrangement or in some variation of a group settlement,
7 you stepped down and ceased devoting effort to the case;
8 right?

9 A. Right. Correct.

10 Q. And the plaintiff likewise was entitled to stand
11 down and cease devoting effort to the Garlock piece of
12 this case.

13 A. Correct.

14 Q. But there was nothing in the settlement agreements
15 that required the plaintiff to stand down all together.
16 He could -- he was fully entitled to continue to work on
17 other aspects of his tort suit; correct?

18 A. Correct.

19 Q. And to develop other exposure evidence with
20 respect to non-Garlock entities. Right?

21 A. Correct. Although I must point out that in these
22 Mesothelioma cases, the plaintiff's deposition was taken
23 very early in the case because of his illness. And so
24 that -- that case was often developed very early in his
25 deposition, those identifications.

Cross - Turlik

1 Q. Particularly if it was a living Mesothelioma
2 victim?

3 A. Correct.

4 Q. Because they need to get to trial in their
5 lifetime?

6 A. Well that was one aspect. And even in those
7 places where the cases couldn't or wouldn't be moved up,
8 it would be to preserve his testimony.

9 Q. It's true, is it not, that the Mesothelioma claim
10 is more valuable if the plaintiff is alive at the time of
11 trial?

12 A. I think that's accepted. That's the general
13 thought.

14 Q. And the defendants have an inherent incentive, do
15 they not, to delay it?

16 A. The extremis dockets went on whatever the
17 defendants did.

18 Q. Well,

19 A. Garlock wasn't a big -- wasn't into the delay
20 tactics, if you're trying to get to that.

21 Q. Are you aware of any case where any defendant
22 applied to the court to kick the -- a living Mesothelioma
23 case off the trial docket to continue the trial date
24 because of inadequacies in the discovery rendered by the
25 plaintiff?

Cross - Turlik

1 A. Yes, I've seen that where there would be -- the
2 pathology, for example, would not be given to them so
3 they couldn't confirm the disease.

4 Q. And getting kicked off a trial calendar would be a
5 very costly sanction for a living Mesothelioma victim?

6 A. It was very reluctantly used. And what happened,
7 the courts bent over backwards extending the deadline for
8 them asking, the defendants, to try to rush the materials
9 to their experts. So it was rarely, rarely used. And in
10 fact, it -- the case would be continued not for a term
11 but for a month.

12 Q. You've seen defendants invoke that remedy?

13 A. Yes. And then the case was tried the following
14 month while the person was still alive.

15 Q. You spoke yesterday of opt outs.

16 A. Yes.

17 Q. If you didn't have a group deal covering a period
18 of years with a law firm, was there any issue of opt
19 outs?

20 A. We wouldn't call them opt out. What happened is
21 there was a known settlement value for certain types of
22 cases. And so the cases, although there wasn't a
23 agreement in quotations, there was a generally accepted
24 value for the cases. So in those cases, we typically
25 would follow that. Plaintiffs would occasionally try to

Cross - Turlik

1 request more money. When the case would go in front of
2 the judge, that's one of the things the judge, during
3 settlement negotiations, would ask: Are you putting your
4 standard numbers on this case? Our response, typically,
5 would be yes, but they are trying to expand that number
6 and we can't do that. So it was like -- it was the same
7 idea as an opt out, but it was not called an opt out
8 because there wasn't a formal agreement.

9 Q. Before you had succeeded in wedding a given
10 plaintiff's firm to a group deal, there was no issue of
11 opt out, was there? It doesn't make any sense.

12 A. Repeat that again.

13 Q. Take a law firm at a time when you had no group
14 deal with the law firm.

15 A. Correct.

16 Q. They were just litigating cases in the normal
17 course.

18 A. Correct.

19 Q. There was no issue of opt out in that
20 circumstance?

21 A. Not that we called an opt out. But there was an
22 issue of cases that had a standard set value that was
23 understood and that there was an attempt to change that
24 value. So it was analogous to an opt out but it wasn't
25 technically an opt out. So you're correct and you're

Cross - Turlik

1 incorrect.

2 Q. As a legal matter, you were not obligated to offer
3 that standard value.

4 A. Correct. But that standard value was a value that
5 was beneficial to Garlock. Generally, it was a low
6 number and it cut our expenses -- our trial -- it stopped
7 our trial costs. So it was something that we would want.

8 Q. Now, did you ever pay attention to a settled case
9 that went to trial against a remaining defendant after
10 Garlock got out?

11 A. Pay attention is a broad word. I would say yes.

12 Q. Okay. What I mean is, did you interest yourself
13 in the resulting verdicts?

14 A. Yes.

15 Q. Let's see slide 747 please. I'm sorry. 747. Did
16 you observe from time to time, sir, that after you
17 settled a case for Garlock the case would proceed to
18 trial against John Crane or Crane and result in a verdict
19 of which a portion was allocated by the jury to Garlock's
20 fault?

21 A. But Garlock wasn't responsible for that verdict?

22 Q. Garlock didn't have to pay it.

23 A. Correct.

24 Q. We're talking about the notional apportionment of
25 liability or responsibility by the jury on the verdict

Cross - Turlik

1 form when a John Crane or a Crane Co went to trial in
2 Garlock's absence.

3 A. I was aware that happened. I can't tell you
4 anything about those.

5 Q. Well you had Virginia as part of your region;
6 right?

7 A. Yes.

8 Q. And you're familiar with the Patton Warnom firm.

9 A. Yes.

10 Q. Does it surprise you to see a case for \$10,400,000
11 against John Crane with a 33 percent allocation to
12 Garlock?

13 A. A lot of things surprise me and don't surprise me.
14 I'll accept -- if the question is do I accept that what
15 you put there is correct, I'll accept it.

16 Q. No. What I'm asking is whether that was an
17 observation like that that you made from time to time in
18 your work as a Garlock attorney.

19 A. The exact numbers? No. But, yes, that there --

20 Q. The pattern?

21 A. There were verdicts in Virginia that Garlock was
22 assessed liability even though it didn't defend the case
23 but that were larger numbers. Yes.

24 Q. And when Garlock is putting other entities on the
25 verdict forms who are absent from trial and urging the

Cross - Turlik

1 jury to apportion liability to those absent entities,
2 those entities aren't there defending either; right?

3 A. The plaintiff actually has the motivation to
4 defend those companies and does so, but that's different
5 here because by defending Garlock the plaintiff's
6 attorney would be defending crane. So it's counter to
7 his interests. So he would actually be attacking Garlock
8 and Crane in unison. Where in the example I gave, it's
9 very much in the plaintiff's benefit to defend those
10 thermal insulation shares. So it's --

11 Q. You're speaking of John Crane?

12 A. John Crane is the example you're showing here.

13 Q. Did John Crane use Garlock gaskets? Is that what
14 you're saying?

15 A. No. A gasket.

16 Q. A gasket?

17 A. So if the plaintiffs were to present evidence that
18 attacks John Crane's low-dose offense but say that
19 doesn't apply to Garlock, they're going to lose favor
20 with the jury. So they're attacking gaskets generally,
21 John Crane specifically, and Garlock's being brought up
22 into that. Completely different situation when Garlock
23 is presenting evidence against thermal insulation
24 products. The plaintiff is there to defend what is
25 basically indefensible, but they're there trying to

Cross - Turlik

1 defend it.

2 Q. Now when John Crane defends gaskets in general and
3 the jury comes back and hits them with a big verdict and
4 gives them a share of that responsibility to Garlock, the
5 result is to underscore the benefit to Garlock, the very
6 material benefit in dollars of having settled that case
7 pretrial. Right?

8 A. When we settle a case, it's for two reasons. It's
9 to eliminate trial risk and trial costs. So, yes.

10 Q. So taking the Garland F. Jones, Jr. case in
11 Virginia tried against John Crane with a verdict of
12 \$10,400,000 and a 33 percent share to Garlock. That
13 implies to Garlock that Garlock was responsible for
14 \$3,432,000? You didn't have to pay it, but that's the
15 share that the jury apportioned to Garlock.

16 A. Correct.

17 Q. So John Crane didn't have to pay that.

18 A. I assume they didn't.

19 Q. So the plaintiff absorbed the difference?

20 A. I don't know what the mechanism is in Virginia,
21 whether it's a dollar to dollar setoff or whether it's a
22 percentage setoff. So I don't know. I don't know.

23 Q. If Garlock got out of the case for \$200,000, it
24 dodged a bullet in the form of a significant share of
25 liability, at least as indicated by I that verdict.

Cross - Turlik

1 A. I don't know how John Crane tried the case. I
2 don't know that that would have been the same result had
3 we been there. I just don't know.

4 Q. A lot depends on the posture of the case when it
5 comes before the jury; right? Who's there? Who are the
6 defendants? Who's the plaintiff? What are the rules of
7 apportionment? What are the standards of liability? And
8 those vary considerably among the jurisdictions, isn't
9 that so?

10 A. It's how you defended it and whether you had full
11 evidence. There's a lot of variables so you're right.

12 Q. Okay.

13 THE COURT: Let's take a break. Let's come back
14 at 25 after.

15 (Off the record 11:11 a.m.)

16 (On the record at 11:27 a.m.)

17 BY MR. SWETT:

18 Q. Let's resume. You have described, sir, two main
19 defenses: Low-dose involving alternative exposures, and
20 Chrysotile.

21 A. They're interrelated.

22 Q. I understand. But those are the two branches of
23 the picture you strove to present at trial.

24 A. Yes. With the foundation being the recognition of
25 what really caused the disease.

Cross - Turlik

1 Q. And the low-dose goes to the issue of proximate
2 cause in the plaintiff's case.

3 A. It goes to causation. Yes.

4 Q. All right. And the plaintiff, being the
5 plaintiff, has the burden with respect to causation.

6 A. Yes.

7 Q. But you also described comparative fault in the
8 apportionment of liability in those states that follow a
9 comparative fault scheme.

10 A. Correct.

11 Q. And when a defendant seeks to invoke that kind of
12 defense, an affirmative defense, and get other entities
13 in front of the jury or on the verdict form as
14 responsible for the injuries, in general the defendant
15 has the burden of proof in shifting responsibility to
16 those other entities. Right?

17 A. Correct.

18 Q. Some jurisdictions permit the defendant to put
19 settled defendants on a verdict form; correct?

20 A. I think most. Yes.

21 Q. Most that have a comparative fault scheme?

22 A. Right. Well, all would have a comparative fault
23 scheme, I think, allow that.

24 Q. Some do not permit the placing on the verdict form
25 of unsettled nonparties.

Cross - Turlik

1 A. I believe that is so in a few jurisdictions.

2 Q. In any event, the practice varies from state to
3 state.

4 A. Somewhat.

5 Q. Some don't permit putting any nonparty on the
6 verdict sheet at all.

7 A. I would accept that.

8 Q. And some don't permit putting trusts on or
9 bankrupt entities who have trusts on verdict sheets at
10 all.

11 A. Some.

12 Q. And some don't allow that unless the trust has
13 paid a claim.

14 A. Correct. Some. And some do allow.

15 Q. In any event, in undertaking to shift
16 responsibility in a comparative fault state to some other
17 entity on the verdict sheet, the debtor generally was --
18 I'm sorry. The defendant generally must prove the cause
19 of action against that entity on that verdict sheet;
20 correct?

21 A. Generally, yes.

22 Q. All elements of the cause of action.

23 A. Yes.

24 Q. So if it's negligence, you have to satisfy the
25 jury that there was a duty, a breach, proximate cause and

Cross - Turlik

1 loss; correct?

2 A. Correct.

3 Q. And in the case of the strict liability failure to
4 warn case, similarly, you'd have to prove each and every
5 element of that cause to the jury in order to shift
6 responsibility to another entity on the verdict form.

7 A. Yes.

8 Q. Causation standards in asbestos personal injury
9 tort suits for Mesothelioma vary, do they not, from state
10 to state?

11 A. To some degree, I would assume.

12 Q. And where you practice, causation is not shown by
13 placing the plaintiff at the site where a given asbestos
14 product was present.

15 A. Correct.

16 Q. You've got to do more than that. You've got to
17 show that emissions from that product harmed the
18 plaintiff.

19 A. Correct.

20 Q. And the terminology that you tend to use, I infer
21 from your past testimony, is you've got to put the
22 plaintiff in the breathing zone. Correct?

23 A. Right. He has to actually breathe the fibers from
24 those products.

25 Q. Now, Mesothelioma has an extremely long latency

Cross - Turlik

1 period; correct?

2 A. It can.

3 Q. It can be 20, 30, 50 years?

4 A. Correct. I think the low end is generally
5 accepted as 15 with an occasional -- I've heard some
6 people say ten.

7 Q. But in any event, the exposures responsible for
8 creating Mesothelioma occurred long ago?

9 A. I will accept that 20 -- 20 to more years
10 sometimes.

11 Q. And that poses problems of proof for the
12 plaintiff, does it not?

13 A. It can. What, I guess, my point was, in the '90s
14 these gentlemen were making those identifications.

15 Q. You're aware of the accusations that Garlock
16 itself has broadcast through Professor Brickman. You
17 were present for Professor Brickman's testimony; correct?

18 A. I think I was here for most, if not all -- I don't
19 know if all, but most of it -- much of it.

20 Q. You heard him talk about plaintiffs in the 1990s
21 having memories implanted by plaintiff's lawyers.

22 A. I vaguely remember him saying that.

23 Q. You're not suggesting, are you, that a plaintiff's
24 lawyer should implant memories?

25 A. I'm not suggesting that they should.

Cross - Turlik

1 Q. So the fact of the long latency period, the fact
2 that the exposures are in the distant past, certainly
3 poses problems of proof for a defendant intending to lay
4 off liability on someone else. Correct?

5 A. By as much as you're saying? Yes.

6 Q. There are even some states, such as Texas now,
7 that require for a showing of cause --

8 A. I can tell you I don't know.

9 Q. Okay.

10 A. I can stop you right there. I have no idea.

11 Q. I thought I understood you to say that you were --
12 you sometimes strayed beyond your region and consulted
13 about Texas cases.

14 A. I settled a few cases that were in Texas. I have
15 no idea about Texas law.

16 Q. Are you aware that some states, few, maybe only
17 Texas, I don't know --

18 A. Then I'm not aware.

19 Q. -- require a quantification of fiber emissions in
20 order to show causation?

21 A. Generally, but not specifically?

22 Q. Generally not.

23 A. No. Generally, I know -- I think I know what
24 you're talking about, but I don't know the specifics
25 because I've never practiced there.

Cross - Turlik

1 Q. It's not a widespread test but it applies at least
2 in one or more jurisdictions; correct?

3 A. I'll accept that.

4 Q. And where that is the test, the defendant, in
5 attempting to lay off liability on another entity, has to
6 meet that test to show causation. Correct?

7 A. Correct. And I believe that there are -- that our
8 Texas attorneys are prepared to do that. When they have
9 the information about the product then they're able to
10 feed that to the experts who can then make those
11 calculations.

12 Q. So we have two different -- two different issues.
13 What were the products that were the sources of
14 emissions; right?

15 A. Yes.

16 Q. And that fact, at least, is often amenable to
17 proof by documentary means.

18 A. No.

19 Q. You deny that?

20 A. You're saying that I can prove causation through
21 --

22 Q. No. I didn't say causation.

23 A. Okay.

24 Q. I said --

25 A. Then I misunderstood.

Cross - Turlik

1 Q. -- the question of what products were there.

2 A. I can use documents to put a product at a site.

3 Q. But the breathing zone is a different problem;
4 right?

5 A. Yeah. And that's where the disease issue comes
6 into play.

7 Q. You can do that circumstantially?

8 A. That is possible but extremely difficult.

9 Q. You prefer to do it by direct evidence?

10 A. Well, obviously, the best evidence is direct
11 evidence.

12 Q. But direct evidence is often not available in any
13 kind of case.

14 A. Well, it often wasn't available to us.

15 Q. It often wasn't available to the plaintiff either,
16 was it?

17 A. I don't know that.

18 Q. Well you know that oftentimes plaintiffs were
19 understandably unable to recall names that they probably
20 never knew to begin with when they were exposed to
21 insulation products 40 years ago.

22 A. Well in those instances what would often happen is
23 a co-worker would be presented to supply that --

24 Q. But the plaintiff might very well not remember.

25 A. It's possible.

Cross - Turlik

1 Q. Let's look at some verdict forms. We'll come back
2 to that.

3 Now, you understand that many trusts have
4 provisions in there in the way they operate for paying
5 claims on the basis of what is known as "site lists."

6 A. I'm aware that there are site lists.

7 Q. What's your understanding of what site lists are?

8 A. A site list is used as a way of showing exposure,
9 but it doesn't eliminate the need for exposure. So when
10 these people are filing their forms.

11 Q. Wait. Wait. Just tell me what a site list is.

12 A. It's a list of sites. But in the context you're
13 asking, it's a list of sites that the trust will accept
14 as proof of exposure, but it doesn't eliminate the need
15 for the plaintiff to allege that he was exposed to those
16 products at that site. I don't think the trusts are in
17 the business to pay people who weren't exposed to their
18 products.

19 Q. The question, though, is how that may be shown.

20 A. And it can be shown through a site list, but it
21 does not eliminate the need for the plaintiff to have
22 been exposed to that product.

23 Q. You said in an answer just before this for the
24 plaintiff to allege. Are you changing your testimony?

25 A. I don't remember saying the word alleged, but

Cross - Turlik

1 alleged -- if the plaintiff is alleging it, then he's
2 stating it.

3 Q. Let me show you a site list. Your Honor, I'm
4 handing -- I'm going to hand him the Owens Corning site
5 list. It is ACC-696. It's 3" tall.

6 A. Thank you.

7 Q. We're not going to do much with this.

8 A. I was hoping not.

9 Q. I just want to know whether you've ever seen it.

10 A. No. No.

11 Q. Do you have the understanding that the trust's
12 site lists are publicly available?

13 A. If you tell me they are, I will accept that.

14 Q. But you don't know of your own knowledge?

15 A. I don't.

16 Q. During your defense of cases in the 2000s you
17 never referred to a publicly available trust site list
18 for the question of what products were at the site.

19 A. I left that type of work up to other people.

20 Q. Do you know whether your colleagues used trust
21 site lists to address the question whether their products
22 were there?

23 A. I don't know that one way or another. I would
24 assume some did but I don't know.

25 Q. Let me suggest to you an understanding of what

Cross - Turlik

1 trust site lists are and how they work.

2 You're dealing with bankrupted tort defendants,
3 defendants who fled the tort system because they couldn't
4 stand it anymore. Right?

5 A. I would not use those words.

6 Q. They couldn't continue to pay at the levels they
7 were paying before they filed.

8 A. I don't know the motivation.

9 Q. They were distressed.

10 A. That I'll -- they were financially distressed.

11 Q. By reason of the tort litigation.

12 A. I can accept that I guess.

13 Q. And the plans of reorganization provide means of
14 resolving, through the trust distribution procedures,
15 thousands of claims over a period of decades into the
16 future. Correct?

17 A. I'll accept that.

18 Q. And the trusts, in effect, inherit from their
19 debtors the repository of documents and evidence
20 accumulated over the years in tort litigation against
21 those debtors.

22 A. I don't know that to be true.

23 Q. Do you know that to be true in the case of
24 Manville? Because you told me that.

25 A. No. You told me that.

Cross - Turlik

1 Q. And you agreed with me, didn't you?

2 A. I accepted it.

3 Q. Okay. Now do you accept that it is common for
4 trusts to take possession of the tort-related -- tort
5 litigation related documents of their predecessor
6 entities?

7 A. I can accept it but I don't know it. That's all
8 I'm saying.

9 Q. And we've already talked about the trust being
10 limited funds that must be sensitive to cost. So here is
11 the understanding I suggest to you with respect to site
12 lists. The trusts stand in for bankrupt defendants, but
13 they are not litigating entities. Correct?

14 A. So far.

15 Q. The trusts concede that their products were
16 present where the evidence accumulated and the litigation
17 in the past against their predecessor definitively shows
18 them to have been present.

19 A. I don't know that.

20 Q. The trusts do not require -- unlike litigating
21 defendants, they do not require claimants to prove what
22 the trusts already know.

23 A. They do not force the plaintiffs to go through the
24 rigors of proof in a sophisticated, complicated way, but
25 they do still require that they -- there be actual

Cross - Turlik

1 exposure of that person.

2 Q. The trust lists function in this way. If the
3 plaintiff provides evidence, the claimant --

4 THE COURT: Site list you know.

5 BY MR. SWETT:

6 Q. The site lists functions in this way. If the
7 claimant produces evidence that the claimant worked at a
8 given site during a given period of time recognized by
9 the trust on its list, in a trade that in common
10 experience encountered the predecessor's product with
11 fair regularity, the trust does not require more proof on
12 the issue of causation. Do you accept that?

13 A. They are not requiring them to go through the
14 rigors of those proofs. Correct.

15 Q. Now, no litigating defendant is obliged to give
16 anybody the benefit of that kind of presumption, are
17 they? They are fully entitled as litigating defendants
18 to put the plaintiff to the full rigors of the
19 plaintiff's burden of proof.

20 A. Yes.

21 Q. Not only as to product identification but also as
22 to exposure.

23 A. Okay. There is where I think you're going too
24 far. There is still a -- they still have to allege
25 exposure to that product.

Cross - Turlik

1 Q. I'm talking about the tort defendant. The tort
2 defendant is fully entitled to put the plaintiff to the
3 full rigors to the plaintiff's burden on product
4 identification and exposure.

5 A. For what you're saying? Yes.

6 Q. And also causation?

7 A. For what you're saying? Yes.

8 Q. And the defendant bears the full brunt of the
9 burden on all of those elements in the tort system
10 vis-a-vis third persons to which the defendant is
11 attempting to shift liability?

12 A. As far as you're saying? Yes.

13 Q. And putting the plaintiff at the site for that
14 purpose is not enough.

15 A. Correct.

16 Q. It requires evidence that the plaintiff breathed
17 the dust.

18 A. Absolutely.

19 Q. Now, suppose that a plaintiff submits a claim to a
20 trust based only on Mesothelioma diagnosis, trade, and
21 years of exposure. That is the years during which the
22 guy worked in that trade at that site. And the notation
23 on the form that the site is on the trust approved list.
24 Suppose that. Now suppose that the defendant obtained
25 the trust claim. Without proof that the plaintiff was in

Cross - Turlik

1 the breathing zone, that trust claim is of no particular
2 utility to that defendant, is it?

3 A. See, your hypothetical here is incomplete.
4 Because what they are saying when they are filing that
5 form is I have a legal claim. I have -- I was exposed to
6 that product. So you're not giving me a complete --
7 because -- are you telling me that people file forms
8 against -- limited -- okay.

9 These trusts are set up to help people who were
10 sick because of their exposure to these products. So,
11 are you telling me people are actually filing against
12 these trusts to get undeserved money? And then to take
13 that money?

14 Q. The scope of the money is defined by the TDP,
15 isn't it?

16 A. That TDP, as I think we showed, has meaningful --
17 requirement for meaningful and credible exposure.

18 Q. And if the trust accepts the given site coupled
19 with the evidence of the man's trade and the period of
20 time during which he worked at the site as establishing
21 meaningful and credible exposure, because Mesothelioma
22 can result from low-dose exposures, there is nothing
23 wrong with that, is there?

24 A. There -- but you're incomplete. There is the
25 state -- there's the allegation that they were exposed to

Cross - Turlik

1 it. Not just that they worked at a site where that
2 product was there but that they were exposed to it.
3 That's part and parcel.

4 Q. As evidenced by the site list?

5 A. No. No.

6 Q. You've never worked with a site list in the tort
7 system?

8 A. I have not. But I've seen trust forms.

9 Q. You seem commonly confident in your interpretation
10 of the TDP.

11 A. I have used the -- I read the TDP. I have used
12 the claims forms.

13 Q. When did you first read a TDP?

14 A. I don't know. I haven't -- obviously, I haven't
15 read the whole TDP.

16 Q. You will agree with me that the claim that says,
17 essentially, I'm asserting against this trust because I
18 worked in a certain trade during a certain period at your
19 approved site, and that qualifies me under your TDP.
20 Assertions of that kind are not going to get the
21 defendant to the jury on allocating responsibility to
22 that trust predecessor.

23 A. It can, actually.

24 MR. KRISKO: Your Honor, if Mr. Swett's going to
25 be asking Mr. Turlik about the contents of the import of

Cross - Turlik

1 a trust claim form, I would ask that he present
2 Mr. Turlik with a sample claim form so that he can be
3 full in his testimony.

4 MR. SWETT: He purports to be an expert in these
5 matters.

6 THE COURT: He can ask about the questions.
7 Overruled.

8 THE WITNESS: What the trust form says is that you
9 were exposed to -- what the claims form says is that you
10 -- where you were exposed to the product of this company.
11 And then you -- instead of producing an affidavit,
12 instead of producing portions of a deposition transcript,
13 you can cite to that as your evidence, as your
14 confirmation, that they will accept. But the trust is
15 not saying that you can raid the trust by just having
16 worked at a location. The trust is saying that you have
17 to have had meaningful and credible exposure at that
18 location.

19 BY MR. SWETT:

20 Q. Are you aware, sir, that Garlock is complaining of
21 nondisclosure of trust claims with respect to entities
22 that were on the subject plaintiff's complaint? Do you
23 know that?

24 A. I don't understand the question.

25 Q. Plaintiff sues a number of defendants.

Cross - Turlik

1 A. Yes.

2 Q. Among them US Gypsum.

3 A. Okay.

4 Q. US Gypsum goes bankrupt.

5 A. Yes.

6 Q. The case proceeds in its absence.

7 A. Yes.

8 Q. Plaintiff eventually files a claim with the USG
9 trust. Garlock says that's an undisclosed exposure, even
10 if that claim against the USG trust is the based on a
11 site. Does that seem appropriate to you?

12 A. Yes.

13 Q. Suppose the claimant's complaint alleges exposure
14 to USG as one of the defendants responsible for his
15 injuries and the answer comes back and low and behold
16 it's admitted. USG doesn't want to fight that case.
17 That's an appropriate basis to charge USG with liability,
18 isn't it?

19 A. I don't understand the hypothetical you're giving.

20 Q. The trusts concede the causative presence of their
21 products at the site with respect to certain trades, as
22 long as the work took place during a defined period of
23 time.

24 A. But the trust still needs the allegation that they
25 were exposed, not just that they worked there. I think

Cross - Turlik

1 that's where we're having a disagreement.

2 Q. Let's turn to ballots. You've never appeared in a
3 bankruptcy case; correct?

4 A. Incorrect.

5 Q. When's the last time you did?

6 A. 2010.

7 Q. Was that the Grace case?

8 A. No.

9 Q. Where was it?

10 A. It was in Pittsburgh.

11 Q. What case?

12 A. I think Pittsburgh Corning.

13 Q. Have you ever before then taken on --

14 A. That was my first.

15 Q. A first -- that was your first appearance in an
16 asbestos bankruptcy?

17 A. Yes.

18 Q. And your last?

19 A. Well, this is my last.

20 Q. Well this is not an appearance. You're a witness
21 here.

22 A. Oh. You mean appearance -- okay. I took it not
23 in the legal sense of appearance. I took it in the
24 physical sense of appearance.

25 Q. Okay.

Cross - Turlik

1 A. I'm not a bankruptcy lawyer, if that's the point
2 you're making.

3 Q. And you never used ballots in the trust system?

4 A. At the time Garlock --

5 Q. I'm sorry, in the tort system.

6 A. Okay. I didn't even catch that error. But at the
7 time that Garlock was still in the litigation, I wasn't
8 aware of them existing.

9 Q. And you never saw any other defense counsel to use
10 a bankruptcy ballot in the tort litigation.

11 A. That's part of the way I wasn't aware of it. I
12 would have been aware if they did.

13 Q. Do you know what a Proof of Claim in bankruptcy
14 is?

15 A. I think that is the trust claim form. I think
16 that's the method in which you seek compensation.

17 Q. Proofs of claim and then a non-asbestos bankruptcy
18 case. Do you know what that is?

19 A. Not really.

20 Q. Do you know that in asbestos cases, typically
21 proofs of claim for asbestos claims are not submitted to
22 the bankruptcy court?

23 A. I'm not sure what you're talking about.

24 Q. Okay. Do you know that many bankruptcy ballot
25 forms approved by the bankruptcy courts in asbestos

Cross - Turlik

1 personal injury cases say on their face that they are not
2 claims?

3 A. I don't know that one way or another.

4 Q. Do you know that many of those say on their face
5 that they are usable only for voting and for no other
6 purpose?

7 A. They may or may not. I'll agree that it's not a
8 claim. But it is a -- there are statements in there that
9 are acknowledgments of exposure.

10 Q. Do you know that many of them say that they cannot
11 be used against any entity for any purpose other than
12 voting?

13 A. I don't know that.

14 Q. Do you know what "temporary allowance of a claim"
15 in bankruptcy means?

16 A. I have not heard that phrase before.

17 Q. Are you aware that in an asbestos bankruptcy the
18 claims channeled through an asbestos trust include any
19 asbestos-related claims not based on exposure?

20 A. I don't know that.

21 Q. You are aware, are you not, that plaintiffs quite
22 commonly in the tort system assert causes of action for
23 conspiracy or concerted action or that sort of thing;
24 vicarious liability against an entity for the products of
25 another?

Cross - Turlik

1 A. I've seen conspiracy allegations in complaints.

2 I've never seen that litigated.

3 Q. Is it your contention, sir, that the casting of a
4 ballot by or on behalf of an asbestos personal injury
5 claimant in an asbestos bankruptcy constitutes a
6 representation that even as to an exposure-based claim
7 the plaintiff or his lawyer then has in hand evidence
8 sufficient to substantiate that allegation?

9 A. I think what it says is what it says. And it says
10 -- the ones that I've seen say that I was exposed --
11 talks about exposure in a legal claim to the products of
12 the company in which they're voting on the plan.

13 Q. Do they require that at the time of voting the
14 claimant or his counsel have in hand proof of exposure to
15 that debtor's entities or predecessor's product?

16 A. I don't know that it requires it, but that that --
17 there is a statement that it is a fact.

18 Q. Do you know, sir, whether or not a reasonable
19 belief in the circumstances is a sufficient basis under
20 the law for the casting of a ballot in a bankruptcy case?

21 A. I don't know that. I just know what they actually
22 said.

23 Q. Now, let me put to you a hypothetical. The
24 plaintiff sues the defendant. The plaintiff answers the
25 defendant's interrogatories to the best of his knowledge

Cross - Turlik

1 and recollection. The plaintiff sits for deposition,
2 answers all of the defendant's questions to the best of
3 his knowledge and recollection. Now the defendant wants
4 to build the tort case against other entities to lay off
5 liability involved in that trial. Is that defendant
6 entitled to anything more than the plaintiff's honest
7 responses to discovery in the tort suit from the
8 plaintiff?

9 Is the defendant entitled to anything more from
10 the plaintiff than honest responses to discovery in the
11 tort suit?

12 A. We are entitled to honest discovery, honest
13 responses to the discovery. That includes everything
14 about the case, not just what that individual plaintiff
15 knows.

16 Q. Is it your contention that the defendant is
17 entitled to put the plaintiff's lawyer to work to build
18 the defendant's case against the third persons?

19 A. Not to put him to work but to have the work that
20 was done.

21 Q. In the particular case.

22 A. Period.

23 Q. So that if the plaintiff lawyer, in building his
24 case, comes upon certain evidence having to do with
25 exposures to third persons, you're entitled to the

Cross - Turlik

1 discovery of that evidence.

2 A. Yes.

3 Q. But you're not entitled to direct the plaintiff's
4 lawyer to go out and search for the evidence that you
5 want to meet your burden of proof against the third
6 person; right?

7 A. Well, actually, yes.

8 Q. Where?

9 A. In New York.

10 Q. How so?

11 A. If you're -- if you intend to file a trust claim
12 --

13 Q. Leave aside trust claims. We haven't talked about
14 trust claims.

15 A. No, no, no. No, no, no. You can't because that
16 is part of the discovery process. So if you intend to
17 file a trust claim, then you have to actually file it.
18 So that would require that you do that work that you're
19 talking about. So, yes.

20 Q. And we've already established that that rule
21 compelling the bringing of trust claims during the
22 lawsuit is not commonly enforced throughout the United
23 States, is it?

24 A. New York is a very big jurisdiction. It's also
25 Ohio, another very big jurisdiction; Massachusetts, I

Cross - Turlik

1 believe.

2 Q. It is not in general force throughout the country?

3 A. But it is enough that it would affect our
4 settlement values in those jurisdictions.

5 Q. But not elsewhere. Now, you're aware that this
6 Ohio practice that you're speaking of has come into force
7 only this year, in March of this year, pursuant to a
8 statute?

9 A. I don't know that -- I don't know the exact date
10 but I know it's in effect now.

11 Q. This year.

12 A. I'll accept that. I don't know.

13 Q. You're also aware that only one other state,
14 Oklahoma, has any similar statute?

15 A. Yes. But don't -- let's not mislead that it's
16 just that that's the only way you can have that rule. It
17 can be by Case Management Order; it can be by court rule.

18 Q. -- universally?

19 A. I already acknowledged that.

20 Q. So get back to my hypothetical. Let's suppose
21 you're in a jurisdiction where the Ohio statute is not in
22 force and there is no similar Case Management Order. In
23 that circumstance you are not entitled, are you, to put
24 the plaintiff's lawyer to work to go find the evidence
25 for you to build your case against the third person.

Cross - Turlik

1 A. What you're entitled to is the work that he
2 actually has now. And as I showed, that's -- those are
3 things that we didn't get.

4 Q. In regard to that case.

5 A. And those are things we didn't get.

6 Q. In regard to that case.

7 A. I'll accept that.

8 Q. You have used the term in the past "peripheral
9 defendant" to describe Garlock's role in the tort
10 litigation of the 1990s. Correct?

11 A. I may have.

12 Q. Is that an unfamiliar term to you?

13 A. No, it's not.

14 Q. Do you consider it an appropriate label to put on
15 Garlock as its situation stood in the 1990s?

16 A. I think Garlock is still a peripheral defendant.

17 Q. Well Garlock has become a target, hasn't it?

18 A. It has become a target. But in the reality of the
19 exposures, the exposures were still peripheral.

20 Q. And your fundamental pitch to the Court is that
21 back in the 1990s, when plaintiffs had to make the case
22 against the Owens Corning and the Pittsburgh Corning,
23 you could stand in the back and watch them make that case
24 and then come forward at the end and point to Owens
25 Corning and Pittsburgh Corning on the basis of the

Cross - Turlik

1 plaintiff's work and say, it was them not us. Right?

2 A. That was the reality of what was happening.

3 Q. And in those circumstances you didn't have to work
4 up serious expert testimony. You could use what you have
5 termed "rote reports;" right?

6 A. I don't know that I used the word rote, but I
7 think I used the word generic reports.

8 Q. Generic?

9 A. We had serious experts.

10 Q. Serious experts who gave generic reports?

11 A. Their testimony was not generic. And there were
12 occasions in which they gave case specific reports. But
13 remember, a lot of these cases -- because we were in
14 these cases sometimes late, it was not cost effective to
15 do an individual report in every case. So they were
16 generic reports that were accepted. But the testimony
17 was very serious -- by serious experts who gave serious
18 testimony.

19 Q. I meant to go to the cost issue. You didn't have
20 to do a lot of work with those experts in the 1990s, did
21 you?

22 A. Well the first time I used them I did. But once I
23 --

24 Q. After that, it was more or less in the can?

25 A. I don't know that I would use that. We spoke with

Cross - Turlik

1 them. We advised them of the facts of the case and they
2 presented their opinions.

3 Q. Now, generally, you picked up the file about a
4 week before trial. Right?

5 A. There were some times that that was true.

6 Q. That was generally -- that's what you testified
7 before, isn't it?

8 A. It was often --

9 Q. The dominant pattern was you really didn't have to
10 seriously turn to the case until a week before trial?

11 A. Remember, we had a case situation in Philadelphia,
12 where I was practicing at that time. We had ten groups
13 of ten cases. Garlock was in many of those cases. We
14 would not know which case was going to be called, so that
15 was part of it. But we would sometimes get the file a
16 week before.

17 Q. I'm going to read to you, sir, from the deposition
18 taken of you as an expert on June 26th, 2013. It seems I
19 was off by few days when I suggested your expert
20 deposition was in July.

21 A. That's fine. I won't hold that against you.

22 Q. Thank you. I'm going to be reading from page 158
23 and following.

24 Question: "Tell me about the nature of defense
25 costs in the 1990s. How did Garlock spend money

Cross - Turlik

1 on defense in the 1990s?

2 Answer: "Okay. I wasn't regional counsel at that
3 time but it was very simple. We went to
4 depositions. We were able to settle the vast
5 majority of the cases very early in the
6 proceeding, which saved money. We were a
7 peripheral defendant because they had the
8 Amphibole insulation products available to them.
9 So we didn't spend much money on investigation.
10 We didn't spend money on experts, although we had
11 experts available. We used more generic reports.
12 Once we -- once the things changed, our -- the way
13 we spent money on defending a case had to change."
14 That was the question and that was the answer you
15 gave; right?

16 A. I think that's consistent with what I just said.

17 Q. Question: "When you say you didn't spend much
18 money on investigation, how much money did you
19 spend on investigation at that time?"

20 Answer: "I don't know that I was ever involved.
21 Remember, I wasn't regional. But the cases I was
22 involved in, I don't know that we ever did any."

23 Question: "How about money on experts?"

24 Answer: "We had pretty much generic expert
25 reports. And if we went to trial, we had to hire

Cross - Turlik

1 an expert."

2 Question: "Did you look at information from the
3 past cases?"

4 Answer: "In the preparation of this?"

5 Question: "In the preparation of the 1990s cases
6 you were working on."

7 Answer: "Did I look at past cases if a plaintiff
8 or if a witness had testified in the past? Then I
9 made sure I had the transcript. Yes."

10 What did the defense cost through trial in the
11 '90s?"

12 "What did it cost?"

13 "Yeah."

14 "I don't know."

15 We'll stop there for a minute. The nature of the
16 demands upon Garlock's experts, you have testified in
17 this court, changed drastically in the 2000s.

18 A. Yes.

19 Q. But the underlying defense was the same, was it
20 not, as the one you went with in the trials in the 1990s?

21 A. Yes.

22 Q. And that defense, you're saying, worked just fine
23 in the 1990s?

24 A. It worked in the 1990s because we had the exposure
25 to thermal insulation products as part of the -- as the

Cross - Turlik

1 evidence.

2 Q. Question: -- This is from page 159, beginning at
3 line 19. -- "When did defense costs start to pick up in
4 the 1990s? Was it as you got closer to trial?
5 Was it in discovery? When did defense costs
6 accrue in a case?

7 Answer: "It was always a little bit -- there were
8 more of the basic filings, motions, the
9 depositions, generally the week before trial."

10 Question: "That's when the costs would kick in?"

11 Answer: "That's when I would spend time going over
12 the case preparing for trial. That's when I would
13 get the experts geared up."

14 That was the question and that was the answer;
15 right?

16 A. Okay. I'll accept that.

17 Q. Now your experience, also, was that in the 1990s
18 your chances of getting out of a case cheap were better
19 because you had more prominent defendants who were paying
20 a lot for settlement; correct?

21 A. That's part of the reason. I think the additional
22 part of the reason is because we -- the plaintiffs
23 realized that we were a low risk defendant, that we had
24 substantive defense.

25 Q. You have testified, have you not, that it was an

Cross - Turlik

1 advantage to you to have those other big guys in there
2 paying a lot of settlement money because by the time the
3 plaintiff collected that he might lose interest in
4 pursuing you?

5 A. I don't know that I testified as to that, but that
6 is -- I won't disagree with that --

7 Q. Okay.

8 A. -- in some instances.

9 Q. Now you have testified that the essential facts of
10 the case were the same between the 1990s and the 2000s.
11 But, in fact, litigation has been rather dynamic, hasn't
12 it? Was it common, for example, in the 1990s for
13 equipment makers with asbestos components to be widely
14 joined in asbestos suits?

15 A. That is one thing that has changed.

16 Q. Yeah. And you never saw Dr. Longo in a gasket
17 case in the 1990s, did you?

18 A. I don't know -- I can't give you the demarcation
19 of when. It might have been -- actually, my recollection
20 is it was still in the '90s but I don't know.

21 Q. You're aware that he published a report that has
22 drawn a lot of attention in the early 2000s?

23 A. I know he testified before the report. He
24 published -- he tried to publish the report, I think, to
25 buffer his credentials.

Cross - Turlik

1 Q. Well whatever your suppositions about his motives,
2 he became a more prominent figure in the litigation of
3 gasket cases in the 2000s; correct?

4 A. You know, I don't know that. I know that his
5 testimony began before his report. So I think you're
6 incorrect when you say that he just started testifying in
7 the 2000s. My general --

8 Q. I didn't say that.

9 A. Okay.

10 Q. I'm asking you whether or not he became a more
11 prominent figure in the gasket cases in the 2000s.

12 A. He was not a regular feature in my cases in the
13 2000s.

14 Q. You're aware, based upon your experience in the
15 Garlock defense network, that he was a prominent feature
16 in cases elsewhere.

17 A. He was.

18 Q. In the 2000s?

19 A. He was used by the plaintiffs in the 2000s. He
20 was used -- it appears he was used also in the late 1990s
21 --

22 Q. And his testimony was a response, wasn't it, to
23 the low-dose defense?

24 A. I assume so. Yes.

25 Q. That's kind of the way it works in litigation,

Cross - Turlik

1 isn't it? It's sort of point, counter point. The
2 plaintiffs -- the defendant puts up a certain defense;
3 the plaintiffs, when they need to, focus on that defense
4 and how they get around it. Right?

5 A. And there were also people not named Longo that
6 were used for that purpose in the '90s. He wasn't the
7 first person to challenge the Garlock low-dose.

8 Q. The head-on attack on the low-dose defense
9 intensified in the 2000s, didn't it?

10 A. Longo came into play in the 2000s, but there was
11 still an attack on the -- and apparently in the 1990s,
12 also. But there was still --

13 Q. It intensified in the 2000s, won't you agree?

14 A. Longo's name was --

15 Q. Not that one. The general -- the plaintiff's
16 response, the plaintiff's focus in the 2000s, turned away
17 from Owens Corning and Pittsburgh Corning and turned on
18 to the likes of Garlock and John Crane and Crane Co and
19 equipment manufacturers; right?

20 A. I'll give you the plaintiffs were focusing on
21 gaskets.

22 Q. And they invested resources in building that case;
23 right?

24 A. I assume they did. But that started in the '90s,
25 I believe.

Cross - Turlik

1 Q. It became a more serious problem for Garlock in
2 the 2000s.

3 A. You know, Mr. Longo didn't testify as -- he
4 wasn't regularly in my cases.

5 Q. I'm not talking now about Longo. I'm talking
6 about the general trend under which plaintiff's counsel
7 turned their attention in a serious way to products other
8 than insulation. And they invested their resources in
9 building those cases in a way that they hadn't had to in
10 the 1990s, and you were presented with a new challenge to
11 meet the plaintiff's evidence as newly developed in the
12 2000s. Correct?

13 A. We had to meet any evidence they submitted to us.
14 And they submitted Longo in the -- apparently, the late
15 1990s and also in the 2000s, and we had to combat that.
16 Yes.

17 Q. And as your own testimony makes clear, the
18 Mesothelioma cases became a much more serious problem for
19 Garlock in the 2000s than they had been before.

20 A. They did because our defense was somewhat -- was
21 not somewhat. It was limited because of the lack of
22 testimony concerning exposures.

23 Q. But let's not leave a false picture because of the
24 thrust of my questions and your answers. Let's show the
25 judge what the 1990s cost. Mr. Walker, would you put up

Cross - Turlik

1 ACC-745 please? This is a summary we've made on the
2 basis of the Garlock claims database. It shows that even
3 -- that in the period for which data is available in the
4 1980s, Garlock spent \$25 million-plus in the dollars of
5 that day, which translates to \$46 million-plus in
6 inflation adjusted dollars expressed as of the petition
7 date. And it shows that in the following decade Garlock
8 paid fully \$437 million in inflation adjusted numbers and
9 \$310 million in dollars of the day across all diseases.

10 A. I don't know that to be true one way or another.

11 Q. Do those figures surprise you?

12 A. I don't know one way or another.

13 Q. Okay.

14 A. And I -- I don't accept or reject.

15 Q. Let's turn to some of your testimony about trend.

16 Your Honor, I should have mentioned that this part
17 is not confidential. We are going to get to some of the
18 confidential material. But if the courtroom hasn't
19 already been opened, I guess we can open it now.

20 THE COURT: All right. Mr. Miller, why don't you
21 see if anybody's milling around outside that you could
22 get in.

23 (Back in open court.)

24 BY MR. SWETT:

25 Q. One of the trends, Mr. Turlik, that you pointed

Cross - Turlik

1 the judge to was the so-called demise of each and every
2 fiber tested.

3 A. Yes.

4 Q. What do you mean by? What is each and every fiber
5 causation testimony?

6 A. Well, it's each exposure testimony. Not each and
7 every fiber but each exposure. And basically, that's --
8 that was -- I think I actually explained it on my direct.
9 But that's an effort to have medical witnesses testify
10 that any exposure is capable of causing disease. There
11 are courts that accept that. And my point was that in
12 the 2000s there were courts that began rejecting that.

13 Q. One of those courts was the Intermediate Appellate
14 Court in Maryland; correct?

15 A. And that was reversed.

16 Q. Just last week.

17 A. Recently.

18 Q. Wednesday of the week we started the trial?

19 A. Okay. I'll accept that. I know it was very
20 recent.

21 Q. Or the very week before we started trial. So
22 that's a recent development?

23 A. Yes.

24 Q. And the holding of Dixon and the highest court of
25 Maryland, the Court of Appeals, is that there is no

Cross - Turlik

1 particular quantity of exposure that a plaintiff need
2 show in order to satisfy the substantial contributing
3 cause element of asbestos tort; right?

4 A. For Maryland they are allowed to present that type
5 of evidence.

6 Q. You also spoke of the Betz case in Pennsylvania.
7 That's a decision by the Pennsylvania Supreme Court?

8 A. Yes.

9 Q. That court took as a test case the question of
10 whether a record devoid of exposure evidence, other than
11 the testimony of an expert, that each and every exposure
12 is causative and whether that could stand up?

13 A. I don't know that to be so.

14 Q. You're aware of the Wolfinger case, a Pennsylvania
15 Superior Court case decided in February of this year?

16 A. No.

17 Q. You're not? You don't know, then, that the
18 Wolfinger case held that Betz did not require the
19 exclusion of testimony that any exposure is a contributor
20 so long as it was conjoined with other evidence specific
21 to the claim?

22 A. I'm not aware of that.

23 Q. So when you advised the Court that Betz's evidence
24 of an ongoing trend that will favor the debtor in future
25 years, you didn't bother to research under Betz?

Cross - Turlik

1 A. I don't remember what I did. I know I -- well,
2 no, no, that's incorrect because I did look at some other
3 cases. I don't know -- and I had people do research for
4 me because I know there were other cases because, I
5 listed another case. I don't know.

6 Q. In Pennsylvania.

7 A. Yes.

8 Q. Well one of the cases you listed was Reed. Right?

9 A. Listed not for that proposition.

10 Q. A different proposition?

11 A. Yes.

12 Q. Actually, you're right. Let's stick with this
13 proposition for a minute.

14 Since Garlock filed bankruptcy, there's been no
15 change in the law of causation in Mesothelioma cases in
16 West Virginia has there?

17 A. I'm not aware that there has.

18 Q. Florida?

19 A. I'm not aware.

20 Q. California?

21 A. I don't know one way or another.

22 Q. In California any exposure that enhances the risk
23 of Mesothelioma is treated as causative?

24 A. I don't know that.

25 Q. In Illinois that law of causation hasn't changed,

Cross - Turlik

1 has it?

2 A. Since 2010, I don't know.

3 Q. And New York?

4 A. I don't know. Not since --

5 Q. Louisiana?

6 A. Since 2010, I don't know.

7 Q. Let's talk about another trend. You spoke of the
8 equipment makers as showing up as defendants in the
9 asbestos litigation of the 2000s. And oftentimes the
10 asbestos components of the equipment maker defendants are
11 gaskets; right?

12 A. Yes.

13 Q. Asbestos-containing gaskets made by Garlock and
14 other companies?

15 A. Yes.

16 Q. And there has been a war raging in the tort system
17 as to whether or not the maker of original equipment has
18 any responsibility for emissions caused by replacement
19 parts in its equipment; right?

20 A. Yes.

21 Q. And in California, the defendant succeeded in
22 persuading the California Supreme Court that the
23 equipment maker should have no such responsibility.

24 Correct?

25 A. Yes.

Cross - Turlik

1 Q. So that, whereas, before, when Garlock might pay a
2 share and the equipment manufacturer might pay a share
3 for a Garlock gasket emitting fiber through its
4 equipment, after O'Neil that can't happen in California.
5 Right?

6 A. Well the equipment manufacturers under some
7 circumstances can still be liable. They're liable for
8 original equipment. They're liable if they specified the
9 replacement part or if they provided the replacement part
10 so it's not -- it's not that equipment manufacturers get
11 a walk.

12 Q. Their liability has been narrowed considerably in
13 California, hasn't it?

14 A. It has, but not eliminated.

15 Q. And that can't be good for Garlock, can it?

16 A. The testimony will -- it's neither good or bad
17 because those defendants are still sometimes being or
18 oftentimes -- or at times -- I don't practice in
19 California so I can't tell you how often it occurs, so I
20 don't want to mislead anybody. But what I do know is
21 that there will be testimony on occasion in cases as to
22 the things that will allow those manufacturers to be
23 liable.

24 Q. You'll agree with me, won't you, that the
25 liability of equipment manufacturers for gasket

Cross - Turlik

1 components as replacement parts in California has been
2 significantly diminished.

3 A. As stated.

4 Q. And that can't be good for Garlock.

5 A. I don't know one way or another.

6 Q. Okay. You spoke on direct of the range of --

7 A. You know what? That case actually was a case that
8 existed before Garlock filed for bankruptcy. So that's
9 not a change that happened after Garlock's filing.

10 Q. That issue is being debated in other courts, too,
11 isn't it?

12 A. It may or may not be. But it would -- but Taylor
13 happened before, I believe.

14 Q. Excuse me just a minute, Your Honor.

15 THE COURT: All right.

16 BY MR. SWETT:

17 Q. Have you heard of what is called the "bare metal
18 defense?"

19 A. Yes.

20 Q. It's essentially what we've been talking about?

21 A. Yes.

22 Q. Are you aware that the following federal courts
23 apply that defense? I'm sorry. The following courts.
24 Delaware Superior Court?

25 A. I don't know one way or another.

Cross - Turlik

1 Q. Southern District of the United States District
2 Court for the Southern District of Florida?

3 A. I don't know that one way or another.

4 Q. Do you know whether or not that issue is being
5 debated in the Eastern District of Pennsylvania in cases
6 before that court?

7 A. I know there have been decisions by that court
8 but, remember, they're applying state law.

9 Q. Do you know whether or not maritime law recognizes
10 that defense?

11 A. I don't currently have any maritime cases, so I
12 don't know.

13 Q. Do you know whether or not the fallout from O'Neil
14 in California has been uniform among the lower courts
15 there?

16 A. I don't know.

17 Q. You spoke on direct of a wide range of verdicts
18 resulting in Pennsylvania?

19 A. Yes.

20 Q. Is it the case that in Pennsylvania a lawyer
21 cannot suggest to the jury a particular dollar amount as
22 damages?

23 A. Correct.

24 Q. Does that tend to introduce a somewhat
25 unpredictable factor into the quantification of verdicts

Cross - Turlik

1 in Pennsylvania?

2 A. No. I think when somebody's talking about a huge
3 verdict -- suggesting a huge number, that makes it
4 unpredictable. But the verdicts are always
5 unpredictable. I don't think that just that makes it
6 unpredictable.

7 Q. Verdicts everywhere are unpredictable and that's a
8 risk for the defendant?

9 A. Yes.

10 Q. That's a risk worth hedging --

11 A. Yes.

12 Q. -- at the right price?

13 A. Yes.

14 Q. Philadelphia reforms. Let's talk about that doing
15 away with reverse bifurcation. Reverse bifurcation is
16 when harm and damages are tried before the liability and
17 particular defendants; correct?

18 A. Correct.

19 Q. You testified on direct that reverse bifurcation
20 did not begin as an intended benefit to defendants. It
21 wasn't meant for their benefit. That was your testimony;
22 correct?

23 A. It was meant to reduce the backlog.

24 Q. Well let me read to you from a case that was
25 decided before you went to work at Goldfein. Crawford

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1 Lee Jones against Johns-Manville.

2 A. I don't know that case.

3 Q. 1991. It's reported in the Philadelphia county or
4 city reporter, LEXIS 18, January 23, 1991 at star
5 94. It says this. "If anything allowing the
6 plaintiff to concentrate on the acts of defendants
7 could inflame the jurors and interfere with their
8 ability to be objective with respect to damages.
9 Jurors are supposed to be fact finders.

10 Compensatory damages do not change whether
11 defendants are only slightly careless in making --
12 in marketing a product or are evil because they
13 manufacture or distribute products they know will
14 kill many people." Have you read that before?

15 A. I have not. But what we saw in the litigation was
16 that actually was happening. There was an attempt to
17 inflame the jury's passion by numerous firms in
18 Philadelphia.

19 Q. The case that I just read you from, as you'll see
20 when you have a chance to read it, explains reverse
21 bifurcation as an attempt to protect defendants from that
22 prejudice. You were not aware of that before today?

23 A. I was not aware of that. And what I was aware was
24 that the benefit to the court, and that's why the court
25 continued it was to reduce the backlog. Whether that was

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1 the intent or not, it wasn't the actuality of that
2 practice.

3 Q. Now, the -- one of the reforms you've pointed to
4 in Philadelphia is the tightening of the rules so that
5 out of state cases won't come in and try their cases to
6 Philadelphia juries.

7 A. Unless there's a connection. I've seen cases
8 transferred, both to other counties and to other states.

9 Q. Other jurisdictions retain more relaxed venue
10 rules.

11 A. There are some.

12 Q. That's a feature of our federalist system.
13 Plaintiffs can sue Delaware corporations in Delaware;
14 right?

15 A. Yes.

16 Q. Many of the defendants are Delaware corporations.

17 A. I assume so. Yes.

18 Q. Delaware law is, in some respects, favorable to
19 plaintiffs.

20 A. Every state has some laws favorable to plaintiffs.

21 Q. Are you aware that in Delaware if a party is not
22 joined in the suit, the defendant can't put it on the
23 verdict form?

24 A. That's the -- until the recent reforms in
25 Pennsylvania, that was Pennsylvania also.

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1 A. That's why we --

2 Q. Your region included Delaware?

3 A. Yes.

4 Q. Are you aware that bankruptcy trusts don't go on
5 the verdict sheet in Delaware?

6 A. I don't know that one way or another. Or I don't
7 remember that.

8 Q. Do you know that Delaware does not apply the
9 frequency, regularity and proximity test?

10 A. I don't know that one way or another.

11 Q. Let's talk about the Pennsylvania Fair Share Act.

12 A. Let me just make one comment on that. The
13 verdicts in Delaware -- the verdict potential in Delaware
14 are -- the potential's the same anywhere. But the
15 tendency is that Delaware would have lower verdicts than
16 Philadelphia.

17 Q. Are you aware whether cases that used to come to
18 Philadelphia are now going to Delaware?

19 A. I don't know that one way or another. I know that
20 when the cases that actually were filed, they were sent
21 to the person's home county or home state. And I know
22 Northampton County, which has lower values than
23 Philadelphia -- I saw cases go to, I believe, Oklahoma,
24 with lower values than Philadelphia.

25 Q. You have Angelos, the Angelos firm, in

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1 Pennsylvania, don't you?

2 A. Yes, they have some cases.

3 Q. And they're centered in Baltimore?

4 A. Yes.

5 Q. And they can take their cases oftentimes to
6 Maryland juries?

7 A. I think I -- the cases that I'm aware of in
8 Baltimore -- because all the cases are centered in
9 Baltimore, those cases were all Baltimore exposures or
10 Maryland exposures. So I don't know that --

11 Q. Maryland is considered by Garlock to be a
12 dangerous state for it; is that right?

13 A. It is a plaintiff friendly jurisdiction. Yes.

14 Q. Let's shift to the Pennsylvania Fair Share Act.
15 This was a move to pro rata liability for joint
16 tortfeasors to a scheme of comparative fault; correct?

17 A. Yes.

18 Q. It remains to be seen how the courts will apply
19 that; right? There is no case law yet under the
20 Pennsylvania Fair Share Act.

21 A. Right. I told you that at my deposition, that
22 though the effective date of the legislation was -- or 30
23 days, 60 days, whatever, was the effective date of when
24 that law became applicable. So we haven't had cases yet.

25 Q. So all the cases pending against Garlock as of the

Cross - Turlik

1 petition date would be decided under the old system?

2 A. Correct. The futures cases, after the date of the
3 legislation, will be decided under the new system.

4 Q. Under the new statute it's correct, isn't it, that
5 only parties and settled defendants go on the verdict
6 form?

7 A. I believe that is correct.

8 Q. And settlement defendants go on the verdict form
9 only if the defendant offers appropriate proofs, the
10 defendant that wants them on the verdict form.

11 A. Yeah. And it's -- the word isn't settled
12 defendants. It's settled entities, settled -- settled --

13 Q. Parties?

14 A. I don't think they use the word "party." I'm not
15 sure what the exact word, but I don't -- the word
16 "parties" makes it sound as if it's somebody who was sued
17 and had settled. You don't have to have originally been
18 a part of the case. You just -- to be made to be brought
19 on the verdict form.

20 Q. A trust that hasn't paid a claim doesn't go on the
21 verdict form either under the revised statute; correct?

22 A. I think there's going to be litigation as to that,
23 but I would accept that for now.

24 Q. And the meaning of appropriate proofs. What the
25 defendant who wants to add an entity to the verdict form

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1 has to show in order to get it there is completely
2 undecided yet, isn't that so?

3 A. Oh, no. I think it's going to follow Pennsylvania
4 law.

5 Q. Are you aware of any published decision in
6 interpreting the phrase "appropriate proofs" in that
7 context?

8 A. Not in that context. But I think the whole idea
9 of law and precedent is that it would be as it is.

10 Q. So your supposition is that to get another person
11 on the verdict form in Pennsylvania under the revised
12 statute, you have to -- the defendant would have to show
13 that that other entity's product emitted fibers in the
14 breathing zone of the plaintiff?

15 A. Yes.

16 Q. Okay. Are you aware that there -- that the Walter
17 case, decided years ago, well before the change in the
18 statute, held that it would be inappropriate to apportion
19 liability on a strict liability claim because that would
20 import notions of fault into the doctrine of strict
21 liability which are foreign to its essential nature?

22 A. I don't know of the Walter case.

23 Q. Do you agree that there's an open issue whether or
24 not the comparative fault scheme in Pennsylvania will
25 apply to strict liability claims?

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1 A. I disagree with that. I think it will.

2 Q. Do you know whether or not there's an exception in
3 the statute as now revised for intentional tort claims?

4 A. I believe you are correct under some
5 circumstances.

6 Q. Do you know whether or not there is a exception to
7 comparative fault under this statute for claims for
8 intentional misrepresentation?

9 A. I don't remember that.

10 Q. Assume for the moment that there is. Would you
11 agree with me in that circumstance that you're likely to
12 see more fraud claims asserted as part of asbestos
13 personal injury complaints?

14 A. Not against Garlock.

15 Q. One of the documents you received from Robinson
16 Bradshaw in connection with your work as an expert is a
17 memorandum on the law of apportionment in the various
18 jurisdictions; correct?

19 A. I don't remember receiving that.

20 Q. Would you show the witness GST-1305? This is a
21 memorandum to Bates White, Robinson Bradshaw and Hinson.
22 February 5, 2013, law of apportioning damages in asbestos
23 cases in 50 states and the District of Columbia and under
24 admiralty law. Do you see that?

25 A. Yeah. I don't remember seeing that.

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1 Q. Okay. We'll put it aside.

2 You are aware, are you not, that the comparative
3 fault scheme in New York has an exception that imposes
4 joint and several liability on a defendant who is found
5 more than 50 percent at fault?

6 A. I don't remember what the percentage is, but you
7 are correct that that concept exists.

8 Q. And you are aware that that statute also provides
9 an exception to comparative fault and thus imposes joint
10 and several liability upon a defendant who is found by
11 the jury to have been reckless of the safety of others?

12 A. Again, I don't remember the exact wording, whether
13 it's "reckless," but the concept is correct that a case
14 can be -- have an additional finding that would remove
15 it. I think reckless probably is the standard. I'll
16 accept that.

17 Q. You are aware that in the past, gasket makers have
18 been found reckless by New York juries.

19 A. I don't know that. I only know the case in which
20 Garlock was not found reckless.

21 Q. What about Crane?

22 A. I don't know.

23 Q. What about John Crane?

24 A. I don't know.

25 Q. In any event, a finding of recklessness against a

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1 gasket maker would make it a hundred percent liable for
2 all shares no matter how many people were on the verdict
3 form.

4 A. I don't know that. I think it would make it joint
5 and several.

6 Q. Well that's what I meant, joint and several.
7 Fully responsible. The plaintiff could collect from that
8 defendant for the whole sum?

9 A. No. No. You're incorrect. There would be
10 credits, offsets; it might go into the share schemes.

11 Q. The plaintiff could collect.

12 Now, offsets I'll give you. Settled --
13 settlements already achieved would be credited against
14 the verdict?

15 A. Okay.

16 Q. But with that deduction, the jointly and severally
17 liable entity found so by reason of recklessness would
18 face responsibility for the entire amount of the verdict.
19 Correct?

20 A. No. For the remainder maybe but not the entire.

21 Q. For.

22 Q. For the remainder. I said with that credit.

23 A. Okay. And I don't know whether it goes into a
24 share situation or if it's just the credits and no
25 shares. I don't know. I think --

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1 Q. Well, there are some complications regarding
2 computation. But the fact of the matter is that the
3 reckless defendant is not given the benefit of the
4 comparative fault scheme?

5 A. I will give you that.

6 Q. Okay. Now have you heard of the verdicts rendered
7 --

8 A. A full -- he doesn't get full benefit.

9 Q. Have you heard of the verdicts rendered within the
10 last ten days or so in New York City on five cases
11 consolidated for trial, one of which is called the
12 Assenzio case?

13 A. I know there was a large verdict in New York.

14 Q. Let's see ACC-736. Well this is a news account.

15 A. I haven't seen that.

16 Q. It's hard to read. Can you make it clearer at the
17 bottom please? Well, first, let's see what it is. This
18 is a Mealey's News Desk report. July 24, 2013. New York
19 jury awards \$190 million to five asbestos plaintiffs
20 consolidated for trial. Do you see that?

21 A. I see that.

22 Q. Then it goes down. It says, according to the
23 April order, Assenzio and Levy allege exposure as
24 plumbers, Brunck and Vincent as steamfitters and Serna as
25 a painter and laborer. All five allege exposure to

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1 insulation and gaskets, while four allege exposure to
2 pumps, valves and gaskets, and three allege exposure to
3 pipe covering, Justice Madden said.

4 Then it gives a breakdown of the verdict below.
5 It says the verdict as awarded Assenzio, \$30 million;
6 Brunck, \$20 million; Levy, \$60 million; Serna, \$60
7 million, and Vincent \$20 million, according to sources.

8 MR. KRISKO: Your Honor, I object to this line of
9 questioning. I think the witness has established he is
10 not familiar with the circumstances of this case, and I
11 believe counsel is attempting --

12 THE COURT: Well he can answer the questions if he
13 can. If he can't, he'll tell us.

14 BY MR. SWETT:

15 Q. Let's go to 750, please. This is a verdict form
16 that I got from the plaintiff's law firm. It's not the
17 official verdict form. I'm not tendering it as such.
18 I'm using it for illustrative purposes with you, sir.

19 A. Okay.

20 Q. Let's clarify at the top, this is the jury
21 interrogatories in Assenzio, et al versus A. O. Smith
22 Water Products. Have you ever heard of that company?

23 A. Yes, I believe so.

24 Q. They use gaskets and water products companies?

25 A. Potentially.

Cross - Turlik

1 Q. These are the jury interrogatories. They have the
2 usual questions. Exposure to asbestos in connection with
3 boilers. Whether the defendant Burnham exercised
4 reasonable care.

5 Was the defendant Burnham's failure to warn a
6 substantial cause and effect, contributing factor and
7 cause of Mesothelioma? The jury unanimously, according
8 to this document, said yes to all of those.

9 And let's go to the next one. You see how the
10 verdict on the verdict form there are a few other
11 entities?

12 A. Yes.

13 Q. American Standard and Weil McClain. There is a
14 question whether those other companies failed to exercise
15 reasonable care by not providing warning. The jury said
16 yes to all of that. There's a substantial factor finding
17 with respect to those failures to warn. There is a
18 portion of the shares. Burnham got 55 percent. Do you
19 see that?

20 A. Yes.

21 Q. There are damages, pain and suffering. \$30
22 million. Future pain and suffering, \$30 million. Number
23 of years, 1.5. So it's \$60 million.

24 Did defendant Burnham -- this is question five,
25 act with reckless disregard for the safety of others,

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1 namely plaintiff Cesar Serna? Answer: Yes.

2 So Burnham, in that case, if that's an accurate
3 depiction of the verdict, gets hit with joint and several
4 liability on two different grounds. If I'm right, that
5 50 percent is the threshold for coming out of the
6 comparative fault scheme. It gets hit on that basis;
7 right?

8 A. Apparently, yes.

9 Q. And it gets hit on the basis of its reckless
10 disregard as found by the jury.

11 A. Yes. Well there's some important things to point
12 out with this. On number one there is the mechanism for
13 remittitur which is used in New York and has been used.

14 Also, you asked about A. O. Smith and whether they
15 used gaskets. You didn't ask about Burnham. So I don't
16 know whether what the allegation there is. But if you
17 were trying to make the assumption that Burnham was just
18 gaskets, I don't know that that's fair.

19 Q. That wasn't my suggestion.

20 A. Okay. But I think it should be pointed out that
21 Burnham is not a necessarily a gasket product and I'd
22 have to see whether there was allegations -- whether that
23 product used thermo thermal insulation before I found
24 that of any relevance.

25 Q. Fair enough. But if the proof was that the

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1 products for which Burnham is responsible included
2 gaskets, it would be a significant verdict from the
3 standpoint of any gasket maker still defending cases in
4 the tort system?

5 A. No. No. Not by -- by your use of the word "any?"
6 No. I would need to know, like I've been saying
7 throughout, what all the exposures were to that product.
8 So the fact that that was gaskets doesn't tell me that
9 that was found to be reckless. Because if you look, it
10 appears as if the other companies weren't found reckless
11 and they weren't found 50 percent. So there was
12 something different about Burnham, and I would suggest --
13 I don't know, but I would suggest that maybe that was
14 thermal insulation.

15 Q. Well that's rank speculation; right?

16 A. But let's go back. You said that the A. O. Smith
17 -- let's go back a page, please.

18 Q. Go back.

19 A. Okay. You suggested that A. O. Smith was gaskets,
20 and that was 15 percent.

21 Q. No, I didn't. I just said A. O. Smith was a
22 defendant.

23 A. I think you asked me --

24 Q. The record will be what it is.

25 THE COURT: He just asked you if you knew anything

Cross - Turlik

1 about them.

2 THE WITNESS: Okay.

3 BY MR. SWETT:

4 Q. I'll take your point on remittitur. I'm not
5 saying this establishes the dollar amount that the
6 defendant would ultimately pay. It certainly does,
7 however, underscore a very big risk for defendants of the
8 gasket type, of the equipment type, in New York City in
9 juries that are hearing cases these days. Correct?

10 A. No. There's something different between Burnham
11 and the other three defendants, and I would suggest that
12 that's thermal insulation.

13 Q. But you've already acknowledged that that's rank
14 speculation.

15 A. Not rank speculation.

16 Q. Okay.

17 A. There's something different. So, it's not rank
18 speculation. I don't know the facts, though.

19 Q. Your Honor, we're about to get to a part that we
20 would have to close the courtroom and it is 12:40, I
21 think. What's your pleasure with respect to whether we
22 continue or break?

23 THE COURT: Let's keep going till one o'clock or
24 so.

25 MR. SWETT: Okay. We'll break about one.

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1 okay I must ask that you clear the courtroom.

2 THE COURT: Okay. We'll have to ask that the
3 people who haven't signed the confidentiality agreement
4 to leave. I apologize for that, but that's what we're
5 doing.

6 (WHEREUPON, this portion of the transcript
7 has been redacted pursuant to an order of
8 the Court.)

9 BY MR. SWETT:

10 Q. I'd like to look at some other verdict forms.
11 First, I'd like to look at ACC-244. Can you see it on
12 your monitor there?

13 A. Yeah. Yes.

14 Q. This is the verdict form in Garlock's Treggett
15 case. You've certainly seen that before, haven't you?

16 A. No. I've not seen the verdict form.

17 Q. Well what I want to point out is this is the case
18 in which the total verdict was on the order of \$32
19 million, with Garlock getting 39 percent. Excuse me, 40
20 percent and a punitive award. Do you recall, generally,
21 that case?

22 A. I know the name. I know it was a large verdict,
23 and I also believe that there were some nondisclosures.

24 Q. Let's go to page five. These are the other
25 entities that were on the verdict form, and you can see

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1 the relative shares apportioned by the jury. Garlock
2 receiving 40 percent. My interest now is in pointing out
3 to you down at the bottom: U.S. Navy, 39 percent. Have
4 you ever been in a case where the U.S. Navy was put on
5 the verdict form?

6 A. No.

7 Q. It would appear in this case that the U.S. Navy
8 went on the verdict form because Mr. Treggett worked on
9 Navy ships. Right?

10 A. That's a -- I would call that not rank
11 speculation. I would call that educated speculation.
12 You know what I find interesting there, though, is the
13 lack of thermal insulation.

14 Q. Well what I find interesting is that the United
15 States Navy, which was responsible for all the insulation
16 on the ship, received a 39 percent allocation without
17 there being any named product on the verdict form. Is
18 that interest interesting to you?

19 A. I find that interesting. And it's unclear what --
20 why that was put there. Whether it was thought by the --
21 I don't know why it was there and I don't know that there
22 was testimony about thermal insulation.

23 Q. Do you know -- well, haven't you reviewed the
24 Treggett case as part of your work as an expert?

25 A. No. No.

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1 Q. Oh?

2 A. That was not one of the cases in my jurisdiction.

3 Q. I see.

4 A. I did not know about it. I did not -- I was not
5 active in that case --

6 Q. Do you remember the fallout from the Treggett case
7 from the middle of the 2000s when Garlock was suddenly
8 presented with a \$22 million judgment?

9 A. That was obviously something I knew about. I
10 don't remember the number, but knew Treggett was a large
11 number.

12 Q. Let's go to 740 please. Do you know about the
13 Fowers case?

14 A. I know the Fowers case by name. I was not
15 involved in the Fowers case at all.

16 Q. It was another big verdict in California; right?

17 A. I believe so.

18 Q. And, well, on page two of five we see that this
19 jury awarded damages for past non-economic loss,
20 including physical pain and mental suffering, for \$5
21 million. Future non-economic loss, including physical
22 pain and mental suffering, \$5 million. Total:
23 \$10,309,000.

24 And what I'd like to point out further to you is
25 the list of entities on the verdict form at page four.

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1 Paragraph 15: "What percentage of responsibility for

2 David Fowers' harm do you assign to Garlock?"

3 "100 percent."

4 "United States Navy: Zero."

5 "All others: Zero."

6 What I want to point out to you, again, the United
7 States Navy, without any special designation on the
8 verdict form of any specific product but, also, "all
9 others." Are you familiar with any jurisdictions where
10 verdict forms are permitted for comparative fault
11 purposes to allow the defendant to put a line item on the
12 form "all others?"

13 A. I don't know of any other jurisdiction. But I
14 don't know what evidence was included. Was there full
15 disclosure of the thermal insulation?

16 Q. The plaintiffs wouldn't be able to get a judgment
17 on liability against "all others" as such, would he?

18 A. Correct.

19 Q. Okay.

20 A. But I don't know whether there was full disclosure
21 of all thermal insulation exposures. So that --

22 Q. Going to --

23 A. So any point as to Garlock getting a hundred
24 percent and all others --

25 Q. I'm not making a point of that. What I'm making a

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1 point of is that this defendant, Garlock, had the
2 opportunity to point the finger at all others to persuade
3 the jury to lay off liability, and at the United States
4 Navy, without specifying in either case on the verdict
5 form what products they should be responsible for.

6 A. I don't know --

7 Q. The plaintiff does not have that advantage in
8 proving tort, does he?

9 A. He does not. But the point remains, was there
10 full disclosure so that that "all others" means
11 something.

12 Q. Let's take a look at the Dougherty case.

13 A. Yes.

14 Q. I'm sorry. It's Dougherty. Are you familiar with
15 the Dougherty case?

16 A. Is that the Pennsylvania case?

17 Q. Court of Common Pleas, Northampton County,
18 Pennsylvania?

19 A. Yes, sir, I am aware of that case.

20 Q. Eugene Dougherty and Bernadette Dougherty against
21 Allied Signal, et al.?

22 A. Yes. It was tried with Messinger. Not Massinger
23 but Messinger.

24 Q. I know that's a little confusing, isn't it?

25 A. Yes, it is.

Cross - Turlik

1 Q. Let's take a look at GST-2068. Now, Dougherty was
2 one of the cases you cited for the magic that happens
3 when Garlock gets trust claim forms and gets them in
4 front of the jury. Right?

5 A. That is a factor. Yes.

6 Q. Okay. So on page -- I'm sorry. Scroll down to
7 page GST-EST, the number ends in 303. Go to 302 and then
8 come back to 303. Let's show the witness what this
9 question is down at the bottom.

10 "Provide a complete chronological history of
11 plaintiff or decedent's work history," and then it gives
12 particulars that the plaintiff is supposed to respond to.
13 And if we go to the next page 303 we see the answer. It
14 says there that the plaintiff and his lawyers are
15 conducting a continuing investigation. It says that he
16 worked at the Bethlehem Steel plant for a year and gives
17 the location. He worked at Bethlehem Corporation for
18 eight years. He also worked at Ingersoll Rand for nine
19 years. He worked as a welder.

20 He has locations. He regularly and frequently
21 worked in close proximity to those handling, cutting,
22 mixing and applying asbestos-containing products. And
23 then it goes on to describe trades working in his
24 presence. And to say it is believed that the plaintiff
25 worked with and around plaintiff's specific and general

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1 product identification, witnesses known and unknown to
2 him.

3 It goes on to reserve his rights. And that's the
4 substance of the answer given there; right?

5 A. Okay.

6 Q. Then let's go to his deposition, GST-2072. Let's
7 go to page 50 of this deposition. This is Mr. Eugene
8 Dougherty being deposed at the law offices of Peter
9 Angelos on May 14, 2007. And the questioning on page 50
10 goes like this.

11 Question: "Does your work -- do you believe your
12 work as a welder at Bethlehem Corporation involved
13 the use of any products that you believe may have
14 contained asbestos?"

15 Answer: "No."

16 "Do you believe you were exposed to any products
17 that may have contained asbestos while you worked
18 at Bethlehem Corporation?"

19 Answer: "No."

20 Let's go to page 52, line five.

21 Question: "While working as a grinder at
22 Bethlehem Corporation, do you believe you yourself
23 used any products that you believe may have
24 contained asbestos?"

25 Answer: "No."

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1 Question: "While working as a grinder at Bethlehem
2 Corporation, do you believe that others may have
3 been using products that may have been -- that may
4 have contained asbestos in your vicinity?"

5 Answer: "No."

6 Let's go to page 54. Line 14.

7 "Do you believe you used any products while
8 working at Ingersoll Rand that may have contained
9 asbestos other than welding rods?"

10 Answer: "No."

11 Question: "Do you believe you worked around any
12 any asbestos-containing products at Ingersoll
13 Rand other than welding rods?"

14 Answer: "No."

15 "Do you believe or have any knowledge as to
16 whether or not anyone else may have been used
17 asbestos- containing products in your vicinity
18 while working at Ingersoll Rand?"

19 Answer: "No."

20 So that was the plaintiff's testimony with respect
21 to asbestos exposures in his deposition; correct?

22 A. Yes. Apparently so.

23 Q. Let's go to the verdict form.

24 A. Are we going to go to his co-worker?

25 Q. I'm going to the verdict form, sir --

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1 A. Okay.

2 Q. -- which is ACC-740.

3 By the way, did you attend that deposition?

4 A. I don't remember it. I would doubt it. But the
5 -- if my name's on that transcript I did, but I doubt it.

6 Q. 740 is the Fowers. I'm sorry. Wrong verdict.

7 The Dougherty verdict form is ACC-369. Go to the
8 next page please.

9 Question 1(a): "Do you find by the preponderance
10 of the evidence that Eugene J. Dougherty was
11 exposed to asbestos fibers from Johns-Manville
12 asbestos rope or John-Mansville crane brakes
13 supplied by Fairmont Supply?"

14 "No."

15 "If you answer yes to the above -- to any of the
16 above, proceed to question two only as to those
17 parties you have so identified."

18 And it says question two is not answered by the
19 jury, and they didn't get to the question of
20 preponderance of the evidence as to whether products of
21 the defendants contain any unsafe defect.

22 So let's go to the first question at the front
23 page of the verdict form where the finding by the jury in
24 this question: "Do you find by the preponderance of the
25 evidence that Eugene J. Dougherty was exposed to

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1 asbestos fibers from any of the following products
2 of the defendants? Garlock, Hercules, P&H, and
3 General Refractories."

4 And the answer in each instance is no. Right?

5 A. As far as you're saying, yes.

6 Q. And General Refractories is an insulation maker;
7 correct?

8 A. Yes. That's indicated on that form.

9 Q. And Hercules Chemical was in the case as a cement
10 maker.

11 A. Yes.

12 Q. And that jury found no exposure to any of the
13 defendants' products.

14 A. Incorrect? How so?

15 Q. Because it said, was he exposed to the fibers, not
16 to the product.

17 Q. Okay. I take your correction. The fibers?

18 A. Okay. And it's important to know the facts of the
19 case, not just the facts that you selected.

20 Q. Well, you'll get redirect for that.

21 What I'm trying to focus on is the fact that
22 sometimes the plaintiffs come up short. They don't put
23 themselves in the breathing zone of fibers from given
24 products.

25 A. Incorrect. Incorrect. And what happened in this

Cross - Turlik

1 case was that the plaintiff himself said no, but he
2 produced a co-worker who provided that evidence.

3 Q. And the jury rejected the evidence.

4 A. No. What the jury rejected -- and see, here's
5 where it's very important. I said that Garlock products
6 give off oftentimes no asbestos fibers or they give off
7 low amounts of asbestos fibers. So in this instance what
8 that -- that's consistent with the jury understanding our
9 defense. But there was testimony about his exposure to
10 Garlock's products. The jury found that he wasn't
11 exposed to the fibers and that is because the man had the
12 disease, but we were able to show through the trust
13 filings how he got the disease.

14 Q. Well, as far as the jury findings revealed, we'll
15 take it for granted the man had Mesothelioma but there
16 was no finding as to how he got it. All the finding was
17 he didn't get it from these fibers. Isn't that right?

18 A. He did not get it from Garlock fibers. Correct.

19 Q. Or fibers from Hercules, P&H, or even the
20 insulation products of General Refractories.

21 A. I don't know that they were actually -- I don't
22 know that they were in the room. I don't know how they
23 got on the verdict form. But what I do know was that
24 there was testimony that he was exposed to Garlock
25 products. We were able to present testimony as --

Cross - Turlik

1 through the trust forms that he had exposure to thermal
2 insulation products. We presented our defenses and that
3 the jury found that he was not exposed to our fibers.

4 Q. It says there all those four are all defendants.
5 Do you see that?

6 A. They were named defendants.

7 Q. They were named defendants and they didn't --

8 A. Whether they were --

9 Q. They didn't find that the insulation fibers from
10 General Refractories harmed this man.

11 A. I don't know what the evidence was.

12 Q. The plaintiff's causation evidence came up short.

13 A. I don't know what the evidence against General
14 Refractories was, whether there was sufficient -- I don't
15 know.

16 Q. But you're perfectly willing to say that the
17 verdict is explicable entirely by the trust claims forms?

18 A. No. I didn't say -- I didn't say entirely. That
19 is a part of our defense. That's not the whole defense.
20 I've never said that.

21 Q. I'd like to talk to you about the Homa case. That
22 was one of the cases you testified about on direct.

23 A. Yes.

24 Q. And you identified certain settlement
25 correspondence, and you've got that up there?

Cross - Turlik

1 A. Yes.

2 Q. Let's take a look at the correspondence,
3 GST-0403. This is it, isn't it? This is the composite
4 e-mail collection that Garlock marked and presented as an
5 exhibit.

6 A. I believe so.

7 Q. Okay. Now, Bernadette Catalana was the principal
8 contact in these negotiations?

9 A. Yes.

10 Q. The negotiations began in October of 2008?

11 A. I don't know when but I'll accept it. I don't
12 know.

13 Q. Mr. Belluck demanded \$2.6 million to settle the
14 2009 spring trial docket?

15 A. At some point. I don't know what the initial
16 demand was.

17 Q. Garlock's goal was to wed Belluck and Fox to a
18 matrix going forward?

19 A. I know that -- I don't know when that became a
20 goal. I know that was part of the end settlement.

21 Q. Well let's look at the --

22 A. I'm not denying that wasn't part. I don't know
23 when that became a goal.

24 Q. It really was the substance of the negotiation,
25 wasn't it?

Cross - Turlik

1 A. At one point in time it was a part of the
2 negotiation.

3 Q. Whether Belluck and Fox would accept the matrix,
4 which means standard values for cases of given
5 descriptions?

6 A. I think both sides wanted a matrix.

7 Q. Well his demand was \$2.6 million for the 2009
8 trial docket and Bernadette Catalana and Chris Drake
9 proposed a matrix such as we see illustrated on the next
10 two pages of this document. Correct?

11 A. I don't know who proposed it. I know -- and don't
12 get me wrong. I'm only quibbling on that part of it.
13 The matrix was a part of the negotiations.

14 Q. You're aware -- and the matrix, broadly speaking,
15 categorizes the claimants by trade, by disease, by age.
16 Correct?

17 A. Yes.

18 Q. And by jurisdiction, the New York City or upstate.

19 A. Correct. Also by various other things, like
20 whether they were a smoker or not.

21 Q. With respect to lung cancer?

22 A. Yes.

23 Q. Smoking is irrelevant to Mesothelioma, isn't it?

24 A. That's what the current medical science seems to
25 say.

Cross - Turlik

1 Q. Now when negotiations began in October of 2009 a
2 certain case was coming up for trial but it wasn't the
3 Homa case. Do you remember that?

4 A. I don't.

5 Q. Do you remember that there was an agreement by the
6 parties to stand down in discovery, to take that case off
7 the trial list so that they would have the space and time
8 in which to negotiate this new arrangement?

9 A. Tell me the name of the case, because I -- I have
10 not reviewed that in the past because I don't know that
11 that's entirely true.

12 Let me ask you first -- we'll get to that and I'll
13 refresh you as best I can.

14 A. Okay.

15 Q. But up to this point. Belluck and Fox was not on
16 a matrix, were they?

17 A. I don't know one way or another, but I don't
18 believe so.

19 Q. They had been settling their trial dockets on some
20 regular basis but individually negotiating all the cases.

21 A. I don't know that that's true. My recollection --
22 and remember, this is just a recollection without
23 reviewing documents. But I thought we settled a docket,
24 but I think that the docket was a gross figure and not
25 divided -- not divided as part of our negotiations to

Cross - Turlik

1 individual plaintiffs. But I don't know for sure.

2 Q. So let me --

3 A. That's my recollection.

4 Q. -- read some testimony from Joe Belluck. You know
5 Mr. Belluck, don't you?

6 A. I do.

7 Q. You've dealt with him a lot?

8 A. Not a lot.

9 Q. Because you worked through Bernadette Catalana?

10 A. She's the one who dealt with him.

11 Q. Okay. So here is Mr. Cassada's question
12 beginning on page 100, line 2.

13 Question: "So beginning in 2004, then, the
14 settlements were typically group settlements?"

15 Answer: "Correct."

16 Question: "Were they settled on any consistent
17 terms?"

18 Answer: "I don't know what you mean which
19 'consistent terms.'"

20 Question: "Well, were they like matrix deals?"

21 Answer: "So, beginning in 2004 Chris Drake,
22 approximately 2004 -- it may have been 2005, 2003,
23 but in that zone -- approached us asking for some
24 type of matrix to be used because of what he
25 described as 'distressed financial conditions of

Cross - Turlik

1 Garlock.' And he also wanted to have an overall
2 cap on the amount of money that Garlock was
3 providing to Belluck and Fox claimants per year.
4 And we did not agree to either of those specific
5 requests but we did resolve larger groups of cases
6 that basically represented a year's worth of trial
7 settings."

8 That's Mr. Belluck's description of the situation
9 as it existed before these matrix negotiations. Do you
10 have any reason to think that's incorrect?

11 A. Yes.

12 Q. What's that?

13 A. I think that the years may be off in terms of when
14 a matrix was first discussed, but I don't know that.

15 Q. Okay. Well, let's take as our assumption for
16 going forward that this negotiation was the first matrix,
17 as such, that Belluck and Fox and Garlock worked on.

18 A. By agreed to you mean?

19 Q. That they agreed to.

20 A. I will accept that.

21 Q. You are aware that beginning sometime in the mid-
22 2000s Garrison people went out and talked to plaintiffs'
23 lawyers and tried to use the dwindling amount of
24 Garlock's insurance as a negotiating tool to extract
25 better deals?

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1 A. I don't know what they said.

2 Q. Did you do that?

3 A. I used a lot -- I discussed a lot of things. I
4 used that in large part to keep the numbers down, but I
5 didn't do that as a regular. But I -- I did talk about
6 Garlock's financial condition.

7 Q. Okay. So let's pick up with his testimony again
8 Mr. Belluck, starting at line 22, page 100.

9 Question: "So you're saying you didn't accept the
10 idea of a matrix settlement?"

11 Answer: "Correct. Not until 2009."

12 Question: "So eventually it was a matrix
13 settlement but the process was to resolve all of
14 the cases on the docket within a certain period of
15 time?"

16 Answer: "Correct."

17 Question: "You said that was 2004?"

18 Answer: "Approximately."

19 Question: "Were there standards or -- standard or
20 regular values for particular types of claims?"

21 I objected to the form.

22 The witness: "My recollection of that is that
23 Garlock wanted us to have standard or average
24 numbers for our cases and we refused to accept
25 that type of settlement negotiation with them."

Cross - Turlik

1 Mr. Kassner. Question: And we are focused on
2 2004 now?"

3 Answer: "Approximately. It might have been 2005.
4 I don't want to say for sure it was 2004, but
5 2004-2005, in that zone."

6 Question: "Did there come a time when you did
7 agree to a matrix idea?"

8 Answer: "Yes."

9 Question: "And that was a deal that did have
10 standard settlement values for particular types of
11 claims?"

12 Answer: "In May of 2009 when we settled the Homa
13 and Beltrami cases, along with other cases, part
14 of the request by Garlock for settling those cases
15 was for us to agree to a matrix that had an
16 average or standard values in the matrix but
17 included opt out provisions that would allow us to
18 opt out of cases that, for whatever reason, could
19 not be settled within the matrix."

20 Now, does that testimony square with your
21 recollection of events?

22 A. Not really. No.

23 Q. Did you deal with Mr. Belluck in the fall of 2008
24 with regard -- directly, not just by being copied on
25 e-mails, with regard to these negotiations?

Cross - Turlik

1 A. I had some conversations with him. Well, do you
2 mean 2009?

3 Q. 2008. October and thereafter in 2008?

4 A. Okay. I had conversations with him on the
5 telephone in 2008, I believe. So I had -- I had some
6 direct conversations with him. The part that I didn't
7 agree with is I was working more with him. I worked with
8 him occasionally in that period of 2003 to 2005 and I
9 don't remember matrix being part of it then. So I'm
10 saying that the timing is off; that it would have been
11 later that a matrix was first discussed.

12 Q. This is 2008 we're talking about the matrix coming
13 into the discussion?

14 A. Right. But what you had read to me and asked me
15 to accept, I don't know that I accept the dates.

16 Q. Do know that by 2005 Garlock was disclosing
17 through EnPro 10Ks that there would soon come a time when
18 its insurance would be fully committed?

19 A. I don't know that one way or another.

20 Q. And that after that point, asbestos expenditures
21 would flow through the profit and loss statement and hit
22 the bottom line?

23 A. I don't know that one way or another.

24 Q. But you do know that beginning in the mid-2000s
25 Garlock began to at least anticipate, if not experience,

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1 financial distress as a result of the asbestos
2 litigation?

3 A. I don't know that.

4 Q. Now, I didn't tell you that the case that was up
5 on the trial calendar before Homa that they pulled off in
6 order to make space for these negotiations was a case
7 called Troutman. Does that ring a bell with you?

8 A. The name does.

9 Q. Okay. Are you aware that by agreement with Chris
10 Drake, Belluck and Fox and Garlock, stood down in
11 discovery for a period of months between the fall of 2008
12 --

13 A. And that's --

14 Q. -- and the Homa trial in 2009?

15 A. And that's where I think there's a dispute. I
16 don't think there was ever an agreement to stand down.

17 Q. Do you know whether or not any discovery was
18 actively conducted during a period of months before the
19 parties reached impasse and decided to go forward with
20 the trial on Homa?

21 A. On just Troutman, or in Homa? Homa was continuing
22 discovery, so there was not a stand down on Homa.

23 Q. Well let's see what Belluck says.

24 A. That -- I'm just telling you it doesn't matter
25 what he says. My recollection is that there was no stand

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1 down.

2 Q. Well, you know, you'll certainly agree that you
3 may well be mistaken by virtue of a faulty memory.

4 A. Anybody could be wrong about anything --

5 Q. Let's listen.

6 A. -- but I think I would remember a stand down. And
7 I remember -- I remember this coming up before, and I
8 don't remember a stand down.

9 Q. Well, we'll get to it.

10 A. In fact, the Homa case proceeded to trial.

11 Q. Yes. But we're now talking about the time before
12 the parties went back to work on the Homa case.

13 A. So even at some point -- even if you're right,
14 which I don't think you are, there was a stand down.
15 There came a point in time when there wasn't a stand
16 down. There was a point in time when we asked for the
17 bankrupt discovery. So the case proceeded on.

18 Q. I'm not quarreling with you that discovery
19 eventually resumed in Homa. I'm trying to place in
20 context the deal that is reflected in this e-mail
21 correspondence that Garlock's counsel has put into the
22 record. Here's Mr. Belluck's further testimony on this
23 subject. It begins at page 114 at line one.

24 Question: "And you testified earlier about
25 negotiations in connection with the Homa case and

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1 Beltrami that resulted in the matrix deal."

2 Answer: "Correct."

3 "Is this the correspondence in connection with
4 that negotiation?"

5 They're identifying there the very document that
6 you have in front of you.

7 Answer: "Generally, yes."

8 "And did this correspondence take place at least
9 in part during the Homa trial?"

10 Answer: "Yes."

11 Question: "So did the Homa trial provide an
12 environment that resulted in serious settlement
13 negotiations?"

14 Answer: "No."

15 Question: "So the Homa trial -- but these
16 negotiation involved settlement of the Homa
17 trial."

18 Answer: "These negotiations started in October of
19 2008."

20 Question: "Okay."

21 Answer: "Garlock wanted us to agree to a matrix.
22 I would not agree to a matrix. They wanted us to
23 agree to an overall cap on our per case
24 settlements of \$2 million. I would not agree to
25 that. There was a case coming up for trial in

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1 January of 2009 called Troutman. Chris Drake
2 called me and asked me if I would agree to adjourn
3 the Troutman trial to give us additional time to
4 negotiate. And it took us from the period of
5 January '09 until May of 2009 to resolve all of
6 the aspects of the settlements. If the
7 settlements had just been about the inventory of
8 cases and the Homa trial, the settlements would
9 have occurred at the end of 2008 or the beginning
10 of 2009. The reason why the settlement took until
11 May of 2009 was because Garlock wanted additional
12 consideration for the settlement."

13 Question: "You mean it wanted to settle
14 additional cases?"

15 Answer: "No. It wanted a matrix for cases going
16 forward around, and it wanted an overall cap on
17 the amount of payments that would be paid to
18 Belluck and Fox plaintiffs every year."

19 Question: "So during the course of those
20 negotiations, the trial of the Homa case
21 commenced?"

22 Answer: "Yes."

23 Now, do you acknowledge, sir, that as the Homa
24 case was heading to trial, outside of the courtroom
25 Bernadette Catalana and Joe Belluck were working hard on

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1 an effort to agree to a new way of dealing with one
2 another in the tort litigation which, would be a matrix
3 with an annual cap?

4 A. I agree to that. And I also agree that this group
5 of cases were also being negotiated.

6 Q. I'm sorry. I didn't hear you.

7 A. The group of cases that were settled separate of
8 the matrix were also being negotiated.

9 Q. Garlock attempted, did it not, to persuade
10 Mr. Belluck to add cases to the group that would be
11 resolved in 2009 under the matrix. Do you remember that?

12 A. I know that that is one of our goals.

13 Q. Do you remember that Mr. Belluck balked at that?
14 That he said that you're basically trying to dilute my
15 price when I negotiate with you in the range of \$2.6
16 million for a certain set of cases and then you want a
17 bunch of dismissals or you want the resolution of other
18 additional cases for the same dollars? Do you remember
19 that?

20 A. I don't really remember that. I remember that the
21 matrix was negotiated and the cases were negotiated and
22 that there were discussions about both. And in fact, his
23 e-mail indicates a discussion about those cases and what
24 the cost of those cases would be to us.

25 Q. I'm going to read to you from page 116 and forward

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1 at line 17.

2 Question. "You talked about settlement factors
3 that you would discuss with Garlock?"

4 Answer: "I should add, by the way, that the
5 outline of this resolution for the most part was
6 agreed to months before the Homa trial."

7 Question: "The outline but not the economics?"

8 Answer: "Even the economics."

9 Question: "Did the outline include a resolution of
10 the Homa trial?"

11 Answer: "Yes."

12 Question: "So you were saying that the economics
13 of the Homa trial basically had been settled
14 before that trial came under way?"

15 Answer: "Yes."

16 Question: "Then why did the trial go forward?"

17 Answer: "Because Mr. Drake and Bernadette and
18 whoever else was involved kept changing the list
19 of cases that they wanted to include in the
20 agreement. They were adding additional cases that
21 were coming up for trial. They wanted to expand
22 the inventory of cases that we were settling. So
23 it was -- instead of settling a defined group of
24 cases and trying to agree on that number, the
25 ground kept expanding so it made a determination

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1 of all of that, of the actual settlement number,
2 difficult because we were -- we were changing the
3 group of cases that were involved. And they
4 wanted the matrix and they wanted the cap."

5 Question: "So did Garlock want to settle more
6 cases for a sum, a sum that was acceptable to you
7 to settle less cases?"

8 Answer: "Did they want to settle more cases?"

9 Question: "I'm trying to understand the
10 significance of their wanting to add cases to the
11 settlement."

12 Answer: "They wanted to settle more cases for the
13 same amount of money that they were going to pay
14 me for less cases."

15 Question: "Okay. That's my question."

16 Answer: "Right. And beginning in December or
17 October of 2008, as part of this, we had an
18 agreement with Garlock that no discovery was going
19 to be done. We were standing down on discovery."

20 Question: "Did that include discovery in the Homa
21 trial case?"

22 Answer: "Absolutely."

23 Question: "How did it come to pass that the Homa
24 trial actually started under those circumstances?"

25 Answer: "Because they wanted something other than

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1 just the settlement of the Homa trial. They
2 wanted to settle additional cases and they wanted
3 a cap on our overall payments, and they wanted a
4 matrix."

5 Do you acknowledge that in the fall and winter of
6 2008-2009 Garlock was pressing Belluck and Fox to go on
7 to a matrix with an annual cap?

8 A. I don't know that at that time, but I don't accept
9 the portion of Mr. Belluck's --

10 Q. I'm not asking you that. I asked my question.

11 A. Then why did you read it?

12 Q. My question is whether you acknowledge that during
13 this general period of time leading up to the Homa case
14 the negotiations outside the courtroom were all about a
15 matrix.

16 A. I don't agree to that.

17 Q. And a cap?

18 A. I don't agree to that.

19 Q. And a matrix that would continue in future years.

20 A. When you're saying that it was all about that --

21 Q. I didn't say that.

22 A. I thought you did use the words that's all --

23 Q. I said outside of the courtroom, while the Homa
24 case is going forward, the negotiations taking place are
25 about this matrix.

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1 A. I don't --

2 Q. The matrix involved a cap; correct?

3 A. Okay. You have a lot of questions there or a lot
4 of statements.

5 Q. Did the matrix involve a cap?

6 A. Yes. But I don't accept everything else that you
7 say.

8 Q. Was the idea that the matrix would apply to future
9 years?

10 A. Yes.

11 Q. Was the idea that the cap would go down in future
12 years?

13 A. Offhand, I don't remember that but it might have
14 been. But it was not all about the matrix. These cases
15 were negotiated also. They were all part of the
16 negotiations.

17 Q. The upshot was a matrix deal; correct?

18 A. The upshot was that Homa and a number of other
19 cases were settled. And we also had a matrix deal, but
20 they're not separate. The Homa -- the Homa case and
21 those cases were negotiated for a large amount of money.
22 So they weren't insignificant.

23 Q. Oh, I didn't suggest that. But the point -- the
24 point I'm trying to get you to acknowledge is that they
25 went on to a matrix, which was Garlock's demand; correct?

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1 And they accepted a cap, which was Garlock's demand. And
2 they negotiated the group of cases that would be within
3 the matrix within that first year; correct?

4 A. And settle additional cases. And it doesn't make
5 economic sense to have not settled Homa. We spent a
6 large amount of money on Homa.

7 Q. Oh, I'm not suggesting that. Homa was part of the
8 settlement. I'm putting it in a broader context, and the
9 context is the negotiation that we've been through.

10 Now let's talk a little bit about the trial.

11 A. Well, just because I think there should be an
12 answer, I don't agree with that.

13 THE COURT: Let's take a break and just come back
14 at 2:20.

15 MR. SWETT: I'm sorry, Judge. When did you say to
16 return?

17 THE COURT: 2:20.

18 (Off the record at 1:17 p.m.)

19 (On the record at 2:23 p.m.)

20 THE COURT: Have a seat.

21 MR. SWETT: Your Honor, we're still discussing
22 particular cases so we need to clear the courtroom.

23 THE COURT: If there's anybody here who has not
24 signed a confidentiality agreement, you will need to
25 leave now. Looks like it's just the usual suspects here,

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1 so we'll proceed.

2 BY MR. SWETT:

3 Q. Mr. Turlik, ACC-733 is a compilation of e-mails
4 received from Joe Belluck exchanged with Bernadette
5 Catalana and Chris Drake. Now, Bernadette Catalana is
6 the lawyer from the Rochester area who was the lead in
7 dealing for Garlock with Belluck and Fox; correct?

8 A. Yes.

9 Q. And Chris Drake was the Garrison person detailed
10 to deal with Belluck and Fox.

11 A. Yes.

12 Q. Okay. Turn, please, Mr. Walker to page 39032. I
13 just want to show you this and then we'll move on to
14 another topic. Do you see at the top Bernadette
15 Catalana's e-mail address?

16 A. Yes.

17 Q. And this is a message to Joe Belluck. It says --
18 "outstanding discovery" is the subject, and it reads,
19 "What's our status? We have been standing down on
20 discovery to this point. Is that still our posture until
21 we are definitive one way or the other about a deal?" Do
22 you see that?

23 A. Yes.

24 Q. Is it your recollection that in mid-February 2009
25 the parties were standing down on discovery in Belluck

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1 and Fox cases to try to get a deal done?

2 A. It is not my recollection. But there's a
3 difference between us being Garlock standing down and the
4 plaintiffs. The plaintiffs still had other people in the
5 case, so they weren't standing down.

6 Q. Do you know whether or not Garlock was subjected
7 to active discovery by the Belluck and Fox law firm in
8 this period?

9 A. Typically --

10 Q. No, not typically. Actually in this case.

11 A. No. I'll typically and then actually. Typically,
12 we attempted to have people agree not to force us to
13 answer discovery. It was costly, etcetera. And so we
14 would have asked them not to make us provide them with
15 our discovery answers. But that -- that was -- was a
16 regular feature of our litigation in terms of the
17 plaintiff not pursuing any discovery whatsoever. If
18 there were other defendants in the case, they were still
19 doing that --

20 Q. But they weren't --

21 A. From this e-mail, it appears that we were the
22 ones, if anybody, standing down.

23 Q. Mr. Walker, please go to page 39029. This is
24 another e-mail from Ms. Catalana to Joe Belluck. The
25 date is February 2nd. "Subject: Burnett Discovery And

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1 Notice Of Corporate Representative Depo."

2 It reads, "Hi, Pal. How are you? Chris wants to
3 know what your timeframe on these items is. Can we put
4 them off for a little while we get you a counter offer?
5 Let me know. Thanks."

6 It appears to be a stand down, doesn't it?

7 A. Of our corporate representative deposition. And
8 that, again, was very standard.

9 Q. Now --

10 A. That's not a stand down of the complete case.

11 Q. Do you have personal knowledge of whether or not
12 Belluck and Fox was actively pursuing discovery against
13 Garlock during February 2009 or was, instead, focusing on
14 trying to get a deal?

15 A. In terms of Garlock alone? They were not pursuing
16 corporate representative depositions. You're correct.

17 Q. Let's change subjects. Were you in the courtroom
18 when Mr. Henshaw testified?

19 A. No. I don't believe -- if I was, it was very
20 briefly. But I don't think I was.

21 Q. Well the main thrust of your testimony has been,
22 hasn't it, that come the 2000s, testimony concerning the
23 exposures to insulation products waned considerably.
24 Plaintiffs became reluctant to identify those people, and
25 that put Garlock in a world of hurt. That's the sum and

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1 substance of your testimony, isn't it?

2 A. That's your impression of what the sum --

3 Q. Well, of course. But in substance, that's what
4 you're saying.

5 A. It's more detailed than that.

6 Q. Of course. But you are testifying that the
7 testimony waned as far as positive ID of insulation
8 products are concerned.

9 A. It was minimized in that the number of
10 corporations that were identified lessened.

11 Q. And that -- you've talked about six cases in
12 particular. And you've suggested to the judge that those
13 six cases are representative of what you perceive to be
14 going on in the 2000s in the Garlock cases.

15 Q. What I suggested to the judge was that we had a --
16 we had a limited amount of discovery that -- of
17 identification being told to us. When we looked at some
18 of these high value cases, this is what I found.

19 Q. To you, this was a material trend and had a big
20 impact on Garlock's settlement?

21 A. It had a big impact in the high value cases.

22 Q. Okay.

23 A. However, it didn't have any impact on the cases
24 that we were still settling for five or \$10,000.

25 Q. Are you saying it was the determining factor of

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1 the values of your cases that resolved for large dollars?

2 A. It was a major factor.

3 Q. Okay. Let me read to you what Mr. Henshaw said in
4 this trial. This is the transcript of the morning
5 session of July 25th. And I'm on page 910, line 22.

6 Question: "And you agree with me that when you
7 were reviewing the testimony of the current
8 claimants, I'm talking about 27 and I'm not --
9 excuse me. I am not talking about the 27 but for
10 the 500 some."

11 Mr. Henshaw reviewed 500 depositions or so, did
12 you know that?

13 A. Not really.

14 Q. Okay. Well then he goes on in the question. "I'm
15 not talking about the 27. But for the 500-some,
16 they freely admitted that oftentimes they would
17 have been exposed to asbestos from thermal
18 insulation during, either their own activities or
19 other people doing stuff around them. Right?"

20 Answer: "Yes, sir."

21 Further down on page 11, beginning at line 18.

22 Question: "So even in the current claimant
23 depositions, a lot of the claimants would say oh,
24 yeah. I remembered that there was Unibestos there.
25 I remember that there was Johns-Manville

Cross - Turlik

1 thermabestos there. Some of them did freely say
2 that what they could recall about the name of the
3 brand of insulation; right?"

4 Answer: "Yes. That's correct."

5 Question: "Some of them didn't know the brand of
6 insulation. But they said yeah, I'm sure it was
7 thermal insulation; I just don't know who made it.
8 Right?"

9 Answer: "There were some, obviously, couldn't
10 recall brands, but there were many who recalled
11 the brands."

12 And this was -- Question: "And this was for the
13 depositions in the 500-claimant universe in which
14 -- of people who have claims pending right now
15 against Garlock?"

16 Answer: "Yes sir."

17 Is that consistent with your experience?

18 A. In part. And as far as it goes, and I think I
19 testified as to that, that we still had products being
20 ID'd. And I stated that in some of the cases that I put
21 out that there were still some ID as to thermal
22 insulation generically. There was still some -- there
23 was some ID -- I said Johns-Manville in one case. What I
24 -- what the sum and substance of my testimony is, is that
25 the volume is different and that there were then claims

Cross - Turlik

1 filed, affidavits filed, that were not disclosed to us.

2 That is the sum and substance of my testimony.

3 Q. Let's talk about an actual case in which you had a
4 role. You were present in Ohio for the trial of the
5 Blandford case, were you not?

6 A. Yes, I was.

7 Q. The Blandford case is what is on -- what we have
8 come to call RFA List 1A in this case. Do you know what
9 RFA List 1A is?

10 A. No.

11 Q. It's a list of some 26 cases as distinct from the
12 broader list of 210. And the distinction is that Garlock
13 has reserved the right to put in evidence of discovery
14 abuse or misconduct or concealment or that sort of thing
15 in these 26 cases, and the Blandford case is one of
16 those. Do you have that understanding?

17 A. I do now.

18 Q. Okay. Now the victim was a deceased steamfitter
19 in the Cleveland, Ohio area; correct?

20 A. The plaintiff was.

21 Q. His widow Kathleen was the plaintiff.

22 A. The plaintiff's decedent was --

23 Q. She sued many defendants, including makers of
24 amosite products, and many settled. Correct?

25 A. I don't remember that.

Cross - Turlik

1 Q. Okay. Garlock was the sole defendant at trial in
2 November 2003.

3 A. Correct.

4 Q. The jury awarded \$6.4 million in damages?

5 A. Yes.

6 Q. The appellate court reversed on a point of trial
7 procedure. Dr. Longo had been brought back as a rebuttal
8 witness and, under the circumstances, this was held to be
9 reversible.

10 A. Yes.

11 Q. When the case was remanded, by that time a new
12 Case Management Order was in effect in Ohio. Do you
13 remember that?

14 A. I believe so.

15 Q. And that called for the production of trust claim
16 forms?

17 A. Yes.

18 Q. Some trust claim forms were produced.

19 A. I know that -- I know that we had access to some
20 trust claim forms.

21 Q. The case settled without being retried?

22 A. That is correct.

23 Q. It settled for a number that, while not
24 approaching the verdict, was a high number in Garlock's
25 scheme of things: \$400,000. Correct?

Cross - Turlik

1 A. Well I think what it settled for -- there was
2 money left over in a deal, and so that -- it was
3 transferred to that.

4 Q. \$400,000 was put on that case.

5 A. Based on what was left over on a deal. So it was
6 no new money.

7 Q. It was -- that money was spent on the Blandford
8 case; right?

9 A. It was going to be -- it was -- it was allocated
10 by the plaintiff's firm to the Blandford case.

11 Q. Don't you know that on Garlock's books, it's
12 carrying \$400,000?

13 A. Yes, it is.

14 Q. Okay.

15 A. It was not a new 400. It was already allocated.

16 Q. Now you've seen the Rule 36(b) designees'
17 memorandum from Robinson Bradshaw about its contentions
18 in the case?

19 A. I don't know that I have.

20 Q. Okay. Are you aware that Garlock is contending
21 that the plaintiff failed and omitted to disclose in the
22 tort suit discovery disclosures to Manville,
23 Eagle-Picher, specifically Hylo pipe covering and Super
24 66 cement, 48 insulations, Carey pipe covering, A-Best,
25 and that these all came out on remand in 2007?

Cross - Turlik

1 A. You're talking still about the Blandford case?

2 Q. Yes.

3 A. I will accept that.

4 Q. Okay. But Garlock says it also learned in the
5 bankruptcy case that Blandford also had exposure to an
6 unspecified USG product. Are you aware of that?

7 A. I'll accept that. I don't know.

8 Q. The basis of that is a ballot.

9 A. I'm sorry?

10 Q. A ballot.

11 A. I'll accept that. Just so that His Honor knows, I
12 was not involved in the second trial of that case.

13 Q. There wasn't a second trial, was there?

14 A. The preparation of the second trial.

15 Q. It didn't go to trial again.

16 A. Correct.

17 Q. Okay. Now, RBH's memo of June 23, 2013 has
18 allegations that on remand Garlock found HK Porter UNARCO
19 trust claims, and also found that the Eagle-Picher claim
20 had been made before trial. Are you aware of that?

21 A. Not really.

22 Q. Did you have anything to do with work on the
23 analysis of the Blandford case for the purposes of
24 Garlock's contentions here?

25 A. No.

Cross - Turlik

1 Q. Now, you were personally involved in this case?

2 A. I was involved in the trial of the first case --

3 Q. Okay.

4 A. -- where we didn't get that information. What
5 happened afterwards, the trial counsel who was assigned
6 to that case worked closely with the local counsel. And
7 so I didn't --

8 Q. That was O'Connell? Mr. O'Connell was your
9 colleague trying the case?

10 A. He was the local counsel. And then we had other
11 counsel that came in. Schachter and Harris came in and
12 worked closely with him, so I didn't need to be involved.

13 Q. Now, the RBH June 23, 2013 memo also claims that
14 Blandford voted in Babcock, Owens Corning, Fibreboard,
15 ACandS, and PC. Are you with me so far?

16 A. Yes.

17 Q. Okay. Now it sums up by saying, "The following
18 underlying exposures were never identified: Armstrong,
19 USG, Manville, E-P, that's Eagle-Picher; 48 Insulation,
20 UNARCO, HK Porter and ACS." So that's the allegation.
21 Okay?

22 Q. Now you had the expectation back then that a
23 steamfitter in the Cleveland area during the period of
24 this man's active work life would have been exposed to
25 thermal insulation products and sealing products; right?

Cross - Turlik

1 A. I had that expectation --

2 Q. All right.

3 A. -- on an insulator.

4 Q. Right. Now let's see ACC 423. This is the
5 electronic filings of the plaintiff's original complaint
6 in Blandford. This begins the list of defendants named.
7 Go down to the end of that list please. Actually go to
8 paragraph four of the complaint. You see all of these
9 defendants?

10 A. Yeah. By the alphabet, there seems to be at least
11 26 or more.

12 Q. Paragraph four. Can you make that more prominent?
13 Plaintiff does not at this time name Manville corporation
14 or any of the Manville debtors or Canadian companies,
15 Rock Wool Manufacturing Company, Ray Tech, Inc, Raymark,
16 Inc, Eagle-Picher Industries, 48 Insulation, H.K. Porter
17 Company, Keene Corp., Nicolette, Inc., Celotex
18 Corporation, the Babcock and Wilcox Company, Pittsburgh
19 Corning, PPG, Armstrong World Industries, Inc.,
20 Fiberboard Corporation, Owens Corning Fiberglass, GAF
21 Corporation, formerly known as Newport Owners , Inc.
22 successor to GAF Corporation and on and on and so forth.

23 And then down at the bottom you will see there
24 referenced in the same category to W.R. Grace. Down at
25 the bottom it says, said omission of these entities is

Cross - Turlik

1 due to the fact that bankruptcy proceedings prohibit them
2 being named as defendants in this action at this time.
3 In the event that plaintiff at some point in time is
4 allowed to commence an action against these entities,
5 plaintiff will seek leave of court to amend this
6 complaint to properly designate the status of these
7 defendants -- these entities as defendants. Do you see
8 that?

9 A. I see it.

10 Q. Did you ever see it before?

11 A. I, in all likelihood, read the complaint. But let
12 me comment on that, rather than just you reading it,
13 because it deserves comment. Basically, it appears as if
14 they listed every single entity that had filed for
15 bankruptcy. This is not admissible. There's no
16 admission in that that would be able to be put in front
17 of a court. So, I can look on the Internet and find out
18 who all's filed for bankruptcy. This tells me nothing
19 about his exposures. This tells me who has filed for
20 bankruptcy. So it reads for a long time, but it does
21 nothing in terms of the -- our defense of the case.

22 Q. It's a representation by the plaintiff that but
23 for the automatic stay there would be proceeding against
24 these entities, is it not?

25 A. It's a CYA, but it does not allege exposure. And

Cross - Turlik

1 it may name -- they've named probably 40 defendants in
2 the case. So it means nothing. So instead of 40
3 defendants, they would have named 75 defendants. But it
4 doesn't mean that he was exposed to those products and
5 it's not admissible.

6 Q. Well it does say after W. R. Grace and Company
7 that although plaintiff is informed and believes that
8 said entities, as manufacturers and suppliers of asbestos
9 -- asbestos-containing products and/or machinery
10 requiring or calling for the use of asbestos or asbestos-
11 containing products are in some way responsible for
12 plaintiff decedent's injury and/or death. Do you see
13 that?

14 A. Mm-hmm. ("Yes.")

15 Q. That certainly put Garlock on notice that the
16 plaintiff was taking that position.

17 A. That they were taking the position that they were
18 naming every single entity that had filed bankruptcy and
19 were protecting their right to make a claim against it.
20 That was the purpose of that. That wasn't to put us on
21 notice of exposure to those companies. It was a phone
22 book. It's like getting a witness list of the Manhattan
23 phone book. It tells you nothing.

24 Q. Well, come on. Those are precisely the entities
25 that make the kind of Amosite insulation that you were so

Cross - Turlik

1 concerned about; right?

2 A. Yes, indeed.

3 Q. Okay. Now let's go to the interrogatory answers.
4 The first supplemental interrogatory answers or, rather,
5 answers to master consolidated discovery request
6 GST-1881.

7 A. I'm sorry. This is their response or ours?

8 Q. This is the plaintiff's response. Paragraph four,
9 please. I'm sorry. I misguided you. Mr. Walker, go to
10 the first page of text. The page that ends 499. This
11 says attachment to first supplemental work history
12 sheets. Work history sheets were a common vehicle for
13 disclosure in asbestos personal injury cases; correct?

14 A. It happened. Yes. How common? I'm not sure.
15 But some firms used it.

16 Q. And they impart essential information as to where
17 the plaintiff worked and what the trade was. Correct?

18 A. Yes.

19 Q. And this attachment says, based on investigation
20 there is reason to believe that decedent Clyde Blandford,
21 Sr. worked around the following contractors and
22 suppliers. Then the list begins with ACS -- AC&S, Inc.
23 and ends with Plibrico Sales and Services. Correct?

24 A. Yes.

25 Q. Those are at least some of the well known asbestos

Cross - Turlik

1 products contractors that install and removed asbestos.

2 Correct?

3 A. Instead of the Manhattan phone book, it's the
4 Peoria phone book.

5 Q. Right. This is maybe a dozen entities there?

6 A. Yes. It's a small list but it has no weight.
7 It's not admissible. It tells us nothing other than who
8 were the suppliers of products in that -- in that region,
9 in that area.

10 Q. It tells you the plaintiff had reason to believe,
11 and your own common sense and experience conformed to
12 that. You would expect a steamfitter in that region of
13 the country, over a long work period -- working career to
14 be working around asbestos contractors and suppliers like
15 that, wouldn't you?

16 A. At times, yes. But that doesn't give us the
17 evidence.

18 Q. Now, Attachment A proceeds on the next page to
19 what I'll grant you is a long list. It's three pages
20 listing products that, based on investigation, there is a
21 reason to believe that decedent Clyde Blandford, Sr. was
22 exposed to the following additional products. And we see
23 on that list the very names that Garlock is saying were
24 undisclosed as to exposures. And I'm not suggesting to
25 you that this is evidence of exposure. I am suggesting

Cross - Turlik

1 that the claimant is owning up to reason to believe that
2 he had contact with these kinds of products and these
3 manufacturers' products. And they include A.P. Green,
4 Eagle-Picher, Manville, all the ones, GAF --

5 A. It includes every product that had filed for
6 bankruptcy and every product they made. It tells us
7 nothing new. And the reason --

8 Q. Well, now let's shift to page -- the page ending
9 -- excuse me just a minute.

10 A. This goes on for a while, doesn't it?

11 Q. No. I'm not going to bore you with the details,
12 but I'm going to take you right to page 573 which is part
13 of the work history. There we go. And this tells you --
14 if we go back, actually, a couple of pages we will see
15 what job this is referring to. A couple pages back,
16 please. This is -- if you could clarify the top part.
17 This is part of the work history sheet. And it
18 identifies the employer, and it identifies the job site
19 as Timken Steel, Gambrinus Plant. Right?

20 A. Yes.

21 Q. It gives us a time span during which the fellow
22 worked there, 1959 to 1990 off and on it says. Right?

23 A. Yes.

24 Q. It gives you his trade, steamfitter. And now
25 let's go to the page we were looking at before, 573.

Cross - Turlik

1 And this specifically discloses, does it not, that this
2 guy at this site was exposed to pipe insulation of Carey,
3 Kaylo pipe insulation of Owens Corning, Unibestos pipe
4 insulation of Pittsburgh Corning, 85 percent magnesia
5 pipe insulation. That's a pipe insulation, isn't it, of
6 Mundet?

7 A. I believe so.

8 Q. Pipe insulation of Pabco. That's Fibreboard,
9 isn't it?

10 A. I believe think so.

11 Q. And pipe insulation of unknown -- manufacturer
12 unknown. Then it goes on to these other products, some
13 of whom -- for the manufacturer is unknown, such as
14 insulation, gaskets, packing, asbestos, impactables,
15 however, are attributed to Kaiser Refractories and other
16 manufacturers unknown. Correct?

17 A. Yes.

18 Q. Also, Zonolite Monokote fireproofing spray of W R.
19 Grace. And that also is an amosite product; right?

20 A. Yes.

21 Q. And Babcock and Wilcox --

22 A. Wait. Go on. I'm sorry. I didn't mean to
23 interrupt.

24 Q. I'm sorry?

25 A. Go on. I didn't mean to interrupt.

Cross - Turlik

1 Q. And we're now looking at Babcock and Wilcox
2 boilers; correct?

3 A. Yes.

4 Q. Those were notoriously insulated with asbestos.
5 Correct?

6 A. There was evidence to that. Now this document is
7 not admissible.

8 Q. I'm not talking about that. I'm talking about
9 information provided to you in discovery and it includes
10 these specific disclosures. It says Garlock does not
11 contest now.

12 Let me ask you this, though. Unibestos was
13 probably the most potent amosite product on the market,
14 wasn't it? 60 percent amosite?

15 A. Okay.

16 Q. You don't know that of your own knowledge?

17 A. I don't remember percentages.

18 Q. Do you know it was very high asbestos
19 concentration?

20 A. I do.

21 Q. Higher than almost all of the other products?

22 A. I do.

23 Q. And Kaylo was a very notorious asbestos amosite
24 pipe insulation product; right?

25 A. It was.

Cross - Turlik

1 Q. So here you had the plaintiff owning up in the
2 written discovery to these exposures.

3 Now, do you remember -- did you sit through the
4 trial the first time?

5 A. Yes. I participated in some parts of it.

6 Q. Okay. Do you remember the -- notice the Carey
7 pipe.

8 A. Okay.

9 Q. Now go please Mr. Walker to GST-0301 at page 31.
10 This is the 30(b)(6) memo I was telling you about.

11 A. Okay.

12 Q. And if we could go to page 31, subparagraph (d).
13 Mr. Blandford was exposed to asbestos from Carey pipe
14 covering generated by the tear out and application of
15 asbestos pipe insulation from 1963 to 1990 during his
16 work as a plumber/steamfitter.

17 Now if you go up a couple of paragraphs, it lists
18 certain asbestos exposures that Manville -- that Garlock
19 has attributed to him. And it says such exposures
20 provided a foundation for Mr. Blandford to file claims
21 against trusts now responsible for paying claims against
22 those companies. So remember the Carey pipe? That was
23 specifically disclosed. Go down, please. Subparagraph
24 (d), exposed to Carey pipe. And that was specifically
25 disclosed in the interrogatory answers; correct?

Cross - Turlik

1 A. But was it disclosed in testimony?

2 Q. It was in the interrogatory responses.

3 A. So it wasn't in the --

4 Q. I'm not telling you that. I'm telling you it was
5 in the interrogatory responses. Are you aware of that?

6 A. The answers in interrogatories? Okay.

7 Q. Going back to the work history sheet that was the
8 previous exhibit, Exhibit A to the supplemental discovery
9 responses. We saw that the names disclosed there as
10 based on investigation, this guy had reason to believe
11 he'd been exposed to these products including AC&S,
12 A-Best, Armstrong Pipe and Block insulation, Carey Pipe
13 and Block Insulation, Babcock & Wilcox Boilers,
14 Eagle-Picher, specifically Super 66 insulating cement.
15 We're back at page 75 under the original numeration.

16 And also included each company in whose bankruptcy
17 Garlock would say, ah-ha, the -- after our bankruptcy we
18 discovered these ballots: AC&S, Babcock and Wilcox,
19 Fibreboard, OC, PC and USG. Here is my point. They told
20 you they would sue these entities if they were not
21 protected by the automatic stay. They told you they had
22 reason to believe the claimant was exposed to them, but
23 Garlock is suggesting that it's some kind of unfair
24 surprise that the man ended up having ballots cast for
25 him in the bankruptcy cases of those very entities.

Cross - Turlik

1 Does that strike you as something unusual?

2 Something irregular that the man said he would sue them,
3 that he believed he had exposure to them, and yet Garlock
4 treats it as some kind of wrongdoing that he later voted
5 in the bankruptcy cases?

6 A. He said that he would sue every single bankrupt
7 entity. It tells us nothing other than that he intended
8 to file bankruptcy forms. He didn't produce evidence of
9 those exposures.

10 Q. But you yourself were of the view that the
11 products of those entities were replete in the kind of
12 work environment that he work -- labored in all those
13 years in Cleveland.

14 A. But now I have to get that information to the
15 jury. So this is of no moment to me.

16 Q. You had an interrogatory answer that told you he
17 worked with the most poisonous asbestos product of all,
18 Unibestos?

19 A. No.

20 Q. What couldn't you do with that, sir?

21 A. It said the attorneys had reason to believe.

22 Q. No. I'm talking about the substantive answer, not
23 the reason to believe. The substantive answer that
24 listed the product he was exposed to and said Unibesto,
25 Kaylo --

Cross - Turlik

1 A. It was -- there was a preface to that and that
2 preface was important. There. Okay. That is not
3 admissible.

4 Q. Why not? It says, were asbestos products used on
5 this job site? If so, list. He lists them. This is in
6 an interrogatory answer.

7 A. I've tried to have them admitted and I haven't had
8 them admitted.

9 Q. Let's look at his deposition. You remember who the
10 product identification witness was?

11 A. I believe his son.

12 Q. His son, Patrick Blandford. You're aware that
13 Patrick Blandford specifically and repeatedly identified
14 Kaylo as products that were present when he and his dad
15 worked together as steamfitters?

16 A. My recollection is that he did mention Kaylo. My
17 recollection is also that there was some minimalization
18 of that --

19 Q. Well that's --

20 A. -- of those exposures.

21 Q. I'm going to take you to trial testimony. Let's
22 go to the direct examination of Patrick Blandford, the
23 victim's son. November 14, 2003. GST-1871. He gave a
24 lot of testimony about insulation, didn't he?

25 A. I don't remember. I don't know that I would say a

Cross - Turlik

1 lot. There was testimony but, clearly, there was
2 testimony about insulation.

3 Q. Okay.

4 A. I also remember there was testimony about there
5 not being insulation at certain points where I would have
6 expected there to be insulation.

7 Q. Well let's take a look at page 38 please, and the
8 next page, and the next page. He's talking here, is he
9 not, about insulation mud, which was a cement used on
10 insulation in the presence of pipe insulators on the
11 scene. Did you see that?

12 A. It flipped quickly.

13 Q. And now let's go to page 42, lines 13 through 20.

14 "When you had to get into this flange material,
15 get into the flange to break apart the pipes, how did you
16 get through this pipe covering and this mud material?"

17 Answer: "Pipe covering, you just used a hacksaw
18 and just go around the pipe with a hacksaw, take
19 your knife and cut it. You can take pieces
20 apart."

21 Question: "Dusty?"

22 Answer: "Yes, very dusty."

23 Go, please, to page 43, lines 13 through 17. Back
24 up a little bit so we can see the back.

25 Question: "We got the mud. We got the pipe

Cross - Turlik

1 covering. Now do you know whose pipe covering you
2 were removing?"

3 "As to type?"

4 Question: "As to brand name."

5 Answer: "Brand name Kaylo. Most of it was Kaylo
6 Yes."

7 "How did you know it was this Kaylo product?"

8 "Most of it was written on the side of it, on the
9 boxes that they came in."

10 Kaylo is one of the prominent amosite products
11 that you were always concerned about; right?

12 A. Yes.

13 Q. Here he's giving you the actual trade name of the
14 product; correct?

15 A. Yes.

16 Q. Go, please, to page 74, lines 11 to 13. We're at
17 1870 GST-1870. Let's go to page 35 first, lines two
18 through ten. He spoke about -- no, this is not right.
19 Excuse me. The cross-examination of Mr. Blandford begins
20 on page 32. I'm sorry, begins on page 31. I've got my
21 numbers wrong. In any event, go to page 32 please, lines
22 eight through 12.

23 A. That's a -- that's an argument. That's not
24 testimony.

25 Q. Go to 1871, please. Go to 1870. The cross if

Cross - Turlik

1 I've got my numbers right. I don't see a date on that.

2 Go to page 31 please.

3 A. That's argument, either opening or closing.

4 Q. Excuse me, Your Honor. There's a disconnect

5 between our database and our marked copy. I'm going to

6 show counsel what I've got here.

7 I'm going to read from the transcript of November

8 17, 2003. Do you remember, sir, that the -- before I

9 read that. The cross-examination of this fellow focused

10 not on named products but on the fact that he worked in a

11 vast industrial setting where there was miles and miles

12 of insulated asbestos insulated pipe.

13 A. I don't remember that. This trial was in, I

14 believe, 2003. So that was ten years ago. I don't

15 really remember the details, if that's your question.

16 Q. Here is a question that Mr. O'Connell asked him

17 on page 35 of this transcript of November 17, 2003.

18 "So what we're talking about here, if I'm not

19 mistaken, and correct me if I'm wrong, is that a

20 vast majority of the miles of pipe that I've

21 described had to be insulated. Correct?"

22 Answer: "Correct."

23 "And we can agree that the vast majority of the

24 pipe that had to be insulated was insulated with

25 what you understood to be asbestos."

Cross - Turlik

1 Answer: "Correct."

2 On page 69. Question: "During the course of
3 installation of new pipe there were many
4 circumstances where insulators were in the same
5 room as you and your dad." I'm sorry, "as your
6 dad and you."

7 Answer: "Yes, sir."

8 And the question: "And the insulator would bring
9 pipe covering to the job site; correct?"

10 Answer: "Correct."

11 "And they brought it in boxes?"

12 Answer: "Correct."

13 "And those boxes said what, sir?"

14 Answer: "That it was pipe covering."

15 Question: "Who manufactured the pipe covering, to
16 the best of your knowledge, that they brought with
17 you?"

18 Answer: "The one that I recall is Kaylo."

19 So he identified Kaylo again.

20 Down at line 23 of the same page, which is 70.

21 Question: "When pipe cutters cut pipe covering,
22 did they create dust?"

23 "I'm sorry."

24 Question: "When insulators cut pipe covering, do
25 they create dust?"

Cross - Turlik

1 Answer: "Yes."

2 "Would you agree they create a considerable amount
3 of dust?"

4 Answer: "Sometimes. Yes."

5 Question: "Is that dust visible?"

6 Answer: "Yes."

7 Question: "Did at times you bring that dust with
8 you home on your clothes?"

9 Answer: "Yes."

10 Do you recall that testimony or the substance of
11 the man's concession that yes, that insulators cut the
12 pipe covering and it was dusty and he carried it home
13 with him?

14 A. I don't remember that specifically. No.

15 Q. Then he goes on to say this is on page 74.

16 Question from your local counsel. "There were
17 times, however, when tear out was taking place?"

18 Answer: "Sometimes."

19 Question: "And when tear out was taking place,
20 dust was created?"

21 Answer: "Yes."

22 Question: "And the dust created contained
23 asbestos; correct?"

24 Answer: "As far as I know. Yes."

25 Question: "It was visible dust sometimes?"

Cross - Turlik

1 Answer: "Yes."

2 Question: -- and I'd like you to pay particular
3 attention here. "And you and your father breathed
4 that dust, did you not?"

5 Answer: "Yes."

6 Do you remember that this product identification
7 witness -- the only fact witness who testified at trial;
8 correct?

9 A. Yes.

10 Q. That he candidly admitted that he and his father
11 breathed the dust created when the insulators cut the
12 pipe.

13 A. I remember generally that there was identification
14 of Kaylo and that there was identification of exposure to
15 Kaylo.

16 Q. You don't remember?

17 A. I also remember.

18 Q. I'm sorry. Please continue.

19 A. I also remember there was some minimization of
20 that testimony.

21 Q. Well, how about this? This is on page 75,
22 beginning at line 11.

23 Question: "In fact, you have personally mixed mud
24 in your lifetime."

25 Let's pause there. "Mud" was the word he used to

Cross - Turlik

1 describe asbestos-containing cement; correct?

2 A. Yes.

3 Q. He goes on to answer yes.

4 Question: "At least during that period of time?"

5 Answer: "Yes."

6 Question: "And you've seen your dad do it too?"

7 Answer: "Yes."

8 Question: "The mud contains asbestos, does it
9 not?"

10 "As far as I know. Yes."

11 "And the mixing process, does it create dust?"

12 "Yes."

13 "Does it create a lot of dust?"

14 "Fair amount."

15 Next page down at line ten. "When removing this
16 -- you and your dad, during the '66 to '71, when
17 removing mud, I believe you told us you tapped it
18 with a hammer and it would break apart."

19 Answer: "Yes."

20 Question: "Did it break apart -- when it broke
21 apart, did it create visible dust?"

22 Answer: "Yes."

23 Question: "Did your father breathe that dust?"

24 Answer: "I'm sure he did."

25 Is that consistent with your recollection of the

Cross - Turlik

1 testimony?

2 A. I don't remember mud testimony.

3 Q. Next page 77, line 14 -- 13, rather. Back up to
4 seven.

5 "When insulators were present, sir, on the job you
6 shared with your dad they created dust at Timken
7 every day, did they not?"

8 Answer: "Yes."

9 Question: "Daily basis?"

10 Answer: "Yes."

11 Question: "Does dust contain asbestos?"

12 Answer: "To the best of my knowledge. Yes. "

13 Question: "And your dad breathed that dust?"

14 Answer: "Yes, sir."

15 Question: "On a daily basis?"

16 Answer: "Yes, sir."

17 Question: "Brought it home, did he not?"

18 Answer: "Yes, sir."

19 Question: "And there were miles of pipe at Timken,
20 are there not, sir?"

21 Answer: "Yes, sir."

22 And then Mr. O'Connell says, "I don't think I have
23 any further questions for this witness."

24 Do you remember that testimony?

25 A. Specifically, no. But like I said before, I

Cross - Turlik

1 remember generally that there was testimony like what
2 you're describing.

3 Q. Do you remember the pretrial hearing on motions in
4 limine?

5 A. No.

6 Q. Well if I told you, sir, that the plaintiff
7 objected to any mention of bankrupt entities, and the
8 position of Garlock as expressed by Mr. O'Connell was we
9 don't have to get into bankruptcies but we want the
10 freedom to develop all the exposures throughout the
11 record. And the judge said you can have it that way. Do
12 you remember that?

13 A. No.

14 Q. Let's try GST-1874, Mr. Walker.

15 A. I also from what you've said before it appears as
16 if we didn't have all the bankruptcies.

17 Q. And let's go to page six. Do you see Mr. Gibke?
18 He was one of the plaintiff's lawyers?

19 A. Yes.

20 Q. He's on his 35th Motion in Limine and he says --

21 A. Not all were argued though.

22 Q. He says, it's our contention that referencing
23 exposure by Mr. Blandford to companies' products that
24 are now bankrupt is completely irrelevant to the case.
25 And he goes on to argue that this would somehow shift the

Cross - Turlik

1 burden to the plaintiff.

2 And then Mr. O'Connell's response to this
3 argument is on the next page and he says, commencing at
4 line three, Your Honor we have no issue not referencing
5 bankruptcy proceedings of any entity not involved in this
6 case. However, evidence as to exposure to products
7 manufactured by such an entity is directly relevant to
8 the issue of proximate cause. I have no issue with any
9 of the proposed motions in limine refraining from
10 reference to any bankrupt entity. That does not present
11 an issue to -- for us at all. However, central to the
12 case is going to be a presentation of the entire exposure
13 history of this decedent which is well throughout the
14 record. And we would agree to forestall any reference to
15 bankruptcies, but on the issue of proximate cause there
16 is substantial other exposure. And the mere fact that I
17 that they're bankrupt frankly doesn't necessarily --
18 doesn't necessarily affect the issue in the case.

19 Go on, please.

20 And down to the Court. Okay. Well, as you have
21 stated it, Mr. O'Connell, that's the way it will be.

22 A. Yes.

23 Q. There won't be any reference to the bankruptcy as
24 to anyone, but there is -- they should be allowed to
25 mention other exposure to different products other than

Cross - Turlik

1 Garlock products. Do you see that?

2 A. Yes. So basically what that tells me is that --
3 and from what you've read, I can surmise that we had the
4 -- we had information as to Owens Corning to the Kaylo
5 but that that -- that we had information about that. The
6 other trusts that we didn't have the trust forms I'll
7 talk about in a minute.

8 But as to Owens Corning, since we had
9 identification of Owens Corning by the son, we didn't
10 need to introduce that trust -- that bankrupt trust
11 claim. However, if it -- since there was no evidence or
12 if there was no evidence of other bankrupt claims other
13 than the bankruptcy trust, we would not have had
14 Mr. O'Connell making that argument.

15 Q. Well, let's look at the closing. Do you remember
16 the closing argument? Were you present?

17 A. I was present for them.

18 Q. Do you remember that the closing argument scarcely
19 mentioned Kaylo but went on at great length about the
20 miles and miles of insulated pipe; about the fact that
21 this man cut insulation and mixed mud and breathed the
22 dust?

23 A. I don't remember that. But I -- but I don't know
24 that he said that -- and I could be wrong. You've read a
25 lot without asking me any questions. But the miles and

Cross - Turlik

1 miles of pipe? I don't know that that was all Kaylo, so
2 I don't know how he could say it was all Kaylo. But I
3 don't remember the closing.

4 Q. The closing arguments are in GST 1875. I'm going
5 to move all these things into evidence so that the judge
6 can have the full record that we have of the trial. The
7 defense closing begins at page 64. And on page 65 about
8 the middle of the page begins with what I would suggest
9 to you was the main theme of the closing. Beginning at
10 line eight.

11 Can you expand that? Mr. Blandford worked, day
12 in and day out in a significantly heavily-ladened
13 asbestos environment. How do we know that? We heard it
14 from the only fact witness who came before you, Mr.
15 Blandford's son, Patrick Blandford, who testified like
16 the devoted son that I'm sure that he is -- he was and
17 still is. Nonetheless Mr. Blandford is a plaintiff who
18 testified directly. The only testimony you heard
19 directly about conditions inside Timken steel, Gambrinus
20 steel, that was the site disclosed in the work history
21 sheet that we looked at do you remember that?

22 A. Yes. And that was the site where they worked
23 together.

24 Q. And these other sites that he mentions here. And
25 then Mr. O'Connell says the descriptions, miles and

Cross - Turlik

1 miles and miles of pipe, all covered. He goes on to say
2 down at the bottom pipe covers, insulators were present
3 in the plant day in and day out. He then goes on to
4 emphasize the victim's personal activities installing
5 pipe covering. This is on page 66. Cutting pipe,
6 installing pipe, covering during shut downs, removing
7 pipe, covering and removing insulation from things like
8 hearths and other portions of the mill. Huge
9 installations of asbestos containing insulation.

10 This is on page 66. I'm now going to outline 15
11 then. He says not a gasket that might be four or six or
12 20 inches or bigger as you have seen since this case
13 started, but enough asbestos to cover the significant
14 portion of what was inside a plant that stretched for
15 blocks and blocks and blocks in Canton.

16 So the comparison he was drawing was to a little
17 bitty gasket and a great big plant full of asbestos
18 insulation; correct?

19 A. It appears.

20 Q. And he did not find it necessary in that argument
21 to say Kaylo, much less Unibestos or Pabco. He was
22 concerned with the big picture. Don't you think that's
23 right?

24 A. I don't know. I haven't read the entire close. I
25 don't know how much he mentioned anything else. I know

Cross - Turlik

1 that -- I know there was Kaylo identification at the
2 trial.

3 Q. There was Kaylo identification. I'm going to
4 represent to you that in the entire closing it's
5 mentioned, at most, a couple of times. Does that
6 surprise you if that's right?

7 A. If I was giving the closing I would have given
8 more.

9 Q. He did talk about some gigantic hearths in his
10 closing on page 69 and 70. Down at the bottom of 69 --
11 well, let's go to 68. On 68 he talks -- he talks in his
12 closing up there on 68 -- right there. Go up a little
13 bit more please. He emphasized the pipe covering daily,
14 near where Blandford worked, releasing dust. Remember
15 his words. He would go home with dust from the pipe
16 coverers on his clothes. And he goes on to emphasize the
17 substantiality of that.

18 Further down the page he talks about
19 Mr. Blandford's activities cutting gaskets and, again,
20 draws the invidious comparison with the huge amounts of
21 insulation. Then on page 70, at the very top,
22 Mr. O'Connell's arguing, it wasn't just pipe ladies and
23 gentlemen we talked about the hearths, six of them, 150'
24 long each, covered completely with asbestos, which Mr.
25 Blandford told us was Owens Corning product and there's

Cross - Turlik

1 one of the few references to Kaylo.

2 MR. KRISKO: Your Honor, Mr. Swett has read
3 approximately two solid pages worth of text without a
4 question. I would suggest that he argue this evidence in
5 his brief if he's not going to question the witness.

6 BY MR. SWETT:

7 Q. Well this guy -- this witness, excuse me, was at
8 trial. He heard this man testify. He heard him admit
9 that his father was in the breathing zone. He heard him
10 admit that Kaylo was widely used in these facilities.
11 And he had interrogatory answers that had Unibestos,
12 Pabco and a whole bunch of other things identified. I
13 guess I don't have to ask anymore questions about that
14 because you're not disagreeing with any of that, are you?

15 A. I got lost.

16 Q. Now, if Mr. Blandford's lawyer cast a ballot for
17 him in any of those bankruptcies of the entities that he
18 said in the interrogatory answers there was a reason to
19 believe he had been exposed to, you would consider that
20 some kind of failure to disclose a material fact of
21 exposure?

22 A. I still think that we had the right to that.

23 Q. And now suppose that some of those claims to
24 trusts are based on the fact that he worked at that plant
25 we've been discussing and that's the basis of the claim?

Cross - Turlik

1 A. And is alleging exposure to those products at
2 those sites.

3 Q. And is asserting in the claim form I worked there,
4 I was a steamfitter, I worked there during a certain
5 period of time, and your site list includes the Timken
6 facility?

7 A. And he's presenting that to get compensation
8 because he was exposed there.

9 Q. Okay. Let's move on. Are you familiar, sir, with
10 the Fowers case? I guess we touched on this a little bit
11 before.

12 A. And I'm not very familiar with Fowers.

13 Q. You know that the victim was an 83 year-old
14 Mesothelioma sufferer who had been in the Navy?

15 A. No.

16 Q. Did you ever hear tell of a Garlock asbestos
17 claimant who had been exposed at Pearl Harbor?

18 A. I've been to depositions of people who were
19 exposed at Pearl Harbor.

20 Q. Were you at Mr. Fowers' deposition?

21 A. No, I was not.

22 Q. Do you know that he testified to being asked to go
23 in and clean out bombed out ships that had the insulation
24 in them? Have you ever heard that?

25 A. You know, you can list all the facts on Fowers and

Cross - Turlik

1 I'm going to have to give you the same answer. I don't
2 know.

3 Q. Okay. What about Treggett?

4 A. You can list all the facts in Treggett and I'm
5 going to give you the same answer.

6 Q. Now you put Treggett's ballot on the board up
7 here.

8 A. It was an example of a ballot. Yes.

9 Q. And you were suggesting to the judge that the
10 ballot was evidence of some kind of discovery misconduct?

11 A. What I put it up there was to say what -- in terms
12 of what their -- the claims forms say.

13 Q. And before you did that you didn't bother to read
14 the Treggett file to see what the disclosures were?

15 A. Correct.

16 Q. The name Treggett wasn't important. It was the
17 statements about exposure, the years of exposure, things
18 like that from anybody.

19 Q. The statements in the ballots about the years of
20 exposure?

21 A. No. Were we talking about ballots or were we --

22 Q. You put up the Treggett ballot on the board.

23 A. Okay. I thought you were talking about claims
24 form. I'm sorry.

25 Q. You have no knowledge of the Treggett case?

Cross - Turlik

1 A. Other than it existed.

2 Q. Your Honor, I have no -- let me check my notes. I
3 have no further questions of this witness.

4 THE COURT: Mr. Guy.

5 MR. GUY: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MR. GUY:

8 Q. Mr. Turlik.

9 A. Good afternoon.

10 Q. We've met before?

11 A. Yes, we have, indeed.

12 Q. Jonathan Guy for the FCR. I won't be very long,
13 but I do have some questions for you.

14 A. I suspected you might.

15 Q. Now you're wearing two hats today; right? You are
16 a fact witness and an expert witness?

17 A. Yes.

18 Q. Okay. Which hat are you wearing right now?

19 A. No hats because no questions's in front of me
20 other than what hat I'm wearing.

21 Q. All right. So will you be able to tell me when
22 you're a fact witness and when you're an expert witness?

23 A. I don't know. It depends on the question. Some
24 will involve a little bit of both, I assume.

25 Q. But we do agree that your testimony as an expert

Cross - Turlik

1 is based largely upon your experience acting as counsel
2 for Garlock. Correct?

3 A. Yes.

4 Q. And your testimony as a fact witness is based upon
5 your experience acting as counsel for Garlock; right?

6 A. Yes.

7 Q. Got it. Okay. Now, when did you first start
8 representing Garlock in asbestos cases?

9 A. January of 1989.

10 Q. Okay. So 20-plus years total?

11 A. Yes.

12 Q. When did your law firm, Segal and McCambridge,
13 first start representing Garlock, if you know?

14 A. I don't.

15 Q. But they were already a client when you started
16 working for them?

17 A. They were a client in Illinois and some -- and a
18 few other states, not in Pennsylvania.

19 Q. I'm sorry. They were an important client; right?

20 A. I believe so. Yes.

21 Q. Segal and McCambridge has probably billed millions
22 of dollars to Garlock. Correct?

23 A. Yes.

24 Q. Tens of millions?

25 A. I -- probably. I don't know.

Cross - Turlik

1 Q. Probably.

2 A. Yes. Yes. You know what? I think you are right.
3 I haven't thought about it, but you're right.

4 Q. Now, you're admitted to practice in Pennsylvania?

5 A. Yes, sir.

6 Q. You're obviously aware of the ethical rules in
7 Pennsylvania.

8 A. Yes. And I try to follow them.

9 Q. Are you aware of the ethical rule that a lawyer
10 has to zealously represent his client?

11 A. Yes.

12 Q. And you follow that for Garlock; correct?

13 A. During the period they were in the litigation.
14 Yes.

15 Q. And you're doing that today, aren't you?

16 A. I'm not representing them. I'm testifying on
17 their behalf.

18 Q. Okay. Now, so as I understand it, you're
19 testifying today as an independent objective expert?

20 A. I am independent. I am trying to be objective.

21 Q. All right.

22 A. And I've been qualified as an expert. So I guess
23 you're right.

24 Q. So you're not acting as an advocate today
25 presenting the best case you can concerning this issue of

Cross - Turlik

1 exposure and the debtor's theory about expression of
2 exposure to Judge Hodges?

3 A. What I'm doing is presenting the facts as they
4 occurred and then my opinions based on that.

5 Q. Now are you presenting a complete picture of the
6 facts to the judge?

7 A. I don't -- I hope so.

8 Q. But we know you're not, don't we? Because what
9 you're presenting are the facts that my colleagues at
10 Robinson and Bradshaw gave you.

11 A. No. No. That's incomplete. Because what
12 happened is on the -- take, for example, the cases that I
13 discussed in my direct testimony. They got that
14 information from me. They requested information on
15 various cases and they got it from me.

16 Now, there's been discussion about that memo. I
17 didn't rely on that memo. What I did was I went into the
18 transcripts myself. So, for example, I tried to give a
19 complete story when I was discussing cases. And I said
20 yes, there was exposure to this product, and there was
21 exposure to this thermal insulation. So I did attempt to
22 give a full story.

23 Q. And if I have this right, what you're saying is
24 that for the cases that you were involved in, that you're
25 familiar with, that you've told the Court about today,

Cross - Turlik

1 the six cases. Right?

2 A. Yes.

3 Q. For those cases you weren't getting enough
4 information about asbestos exposure to non-Garlock
5 products. Right?

6 A. Correct. And it appears from the documents that
7 that's true.

8 Q. Now when Mr. Swett questioned you about the
9 Blandford case, you were saying what you got was the New
10 York telephone book. Right?

11 A. In terms of -- I was -- I was taking liberties.
12 But it was a large list of clients. It was a complete --
13 what I meant by that was it was a complete list of every
14 entity, or it appeared to be a complete list of every
15 entity that had filed bankruptcy. So it told us nothing
16 other than a huge list of everybody. That's what that
17 means.

18 Q. Every entity that the plaintiff believed he may
19 have been exposed to?

20 A. No. That's what he said, but it happened to be
21 every entity.

22 Q. Okay. So that's too much information then?

23 A. No. It really wasn't any information. But you're
24 right, too much information. When you include everything
25 that possibly could exist as an answer, you're getting no

Cross - Turlik

1 answer. So you're right.

2 Q. Okay. Now, have you read any of the expert
3 reports in this case other than your own?

4 A. Yes.

5 Q. Have you read Mr. Henshaw's expert report?

6 A. I have not read it. I saw some of it -- I leafed
7 through and saw some of the charts.

8 Q. Were you here in the courtroom for his testimony?

9 A. I don't believe I was.

10 Q. Okay. Now,

11 A. I think the only person that I saw, really, was
12 Professor Brickman.

13 Q. All right. So just putting it in context.

14 Mr. Henshaw was, I believe, previously the head of OSHA.
15 And he was testifying as an industrial hygienist, and he
16 did an awful lot of work for Garlock. He read something
17 like 537 deposition transcripts.

18 A. Okay.

19 Q. Are you aware of that?

20 A. No. But I know he read deposition transcripts. I
21 was questioned about that earlier.

22 Q. And Your Honor, the transcripts that Mr. Henshaw
23 read are listed in great detail as an exhibit to his
24 report, to the extent the Court wants to see what
25 Mr. Henshaw looked at.

Cross - Turlik

1 Now you -- I'll represent to you that many of
2 those transcripts -- and we can get Mr. Henshaw's
3 testimony up on the screen, but I know we want to get you
4 off the stand as quickly as we can because it's been a
5 very long day.

6 I represent to you that many of those transcripts
7 were from the 2005 and 2010 timeframe for current
8 claimants in this case. Do you understand that?

9 A. Yes.

10 Q. So these are people who haven't settled, but
11 they're asserting claims against Garlock. Correct?

12 A. Okay.

13 Q. Now, you didn't read any of those transcripts, did
14 you?

15 A. Actually, I may have because -- if they were from
16 my jurisdictions and there was something happening with
17 the case, I may have. But to give you a complete answer,
18 I didn't read them for before my testimony today or I
19 don't believe I did.

20 Q. Right. And in light of what you've told the Court
21 about this suppression of information, is it surprising
22 to you that Mr. Henshaw said that in those transcripts
23 those plaintiffs were freely acknowledging exposure to
24 insulation products?

25 A. It doesn't surprise me. And I think I said that

Cross - Turlik

1 we often had testimony of exposure to generic insulation
2 products. So it really doesn't surprise me because I
3 have already acknowledged that.

4 Q. Well it went beyond that, didn't it, because
5 Mr. Henshaw said where they knew the names of the
6 products they identified them; correct?

7 A. I don't know that he said that and I don't know
8 that he knows that. I think what he may have been saying
9 is that there was some product identification. I don't
10 know that he's saying it was complete.

11 Q. And in many of your cases, correct, in the 2005
12 timeframe on you had identification of insulation
13 products by plaintiffs. Correct?

14 A. Yes, we had that.

15 Q. And in fact, I think you told me at your
16 deposition that many, many law firms freely acknowledge
17 identities of products where they know it.

18 A. Yes. And that those -- those values were not the
19 super-inflated values.

20 Q. Now, if I have it right, you're relying on the six
21 cases; right?

22 A. No. You're wrong.

23 Q. The six cases -- you've six presented cases to the
24 Court.

25 A. I presented them, but I'm relying on my wealth of

Cross - Turlik

1 experience.

2 Q. Right. But the circumstances in this specific
3 cases where you have shown the Court that you believe
4 that there was suppression of evidence of exposure, we
5 only had six that you've testified about.

6 A. Well I actually talked about a couple of other
7 cases, but there was six that I presented on primarily.
8 But I also presented or testified as to how there was a
9 tendency in the '90s to identify more thermal insulation
10 products and that that did not exist in the 2000s
11 generally.

12 Q. How could you square that, sir, with what
13 Mr. Henshaw is saying that when he's reading the
14 transcripts of 537 plaintiffs? That's a big sample from
15 the 2005 on timeframe current claimants. How can you
16 reconcile that with the fact that those plaintiffs are
17 freely admitting exposure to insulation products?

18 A. There are some -- I don't know what he said so I
19 don't know that he said that they all did. But what I do
20 know, and I think there's been testimony presented that
21 that was not universal. But remember the vast majority of
22 our claims were settled at very low numbers. So it
23 doesn't surprise me that there were a number of people
24 doing exactly that. But there were inflated values paid
25 to people who weren't doing that.

Cross - Turlik

1 Q. Right. And we've been through that with Mr. Swett
2 and I'm not going to get into that. The Court's seen
3 what those individuals did disclose.

4 Now, you haven't read Dr. Rabinowitz's report;
5 correct?

6 A. No, I did not.

7 Q. Right. But you understand it's the plaintiff's
8 [sic] position that Judge Hodges cannot rely on
9 Dr. Rabinowitz's report which uses settlement values from
10 2005 to 2010 timeframe because those settlement values
11 were inflated and they point the court to the 15 cases.
12 Correct?

13 A. I don't know that. I didn't read the report.

14 Q. Do you know how many thousands of cases
15 Dr. Rabinowitz relied upon in preparing her forecast?

16 A. No.

17 Q. It's more than six though; right?

18 A. No. I didn't read the report.

19 Q. You don't know one way or the other?

20 A. You could say one, you could say a million, and I
21 couldn't agree or contradict you.

22 Q. You would agree with, me, sir, and I think you
23 said this at your deposition, that you're not taking the
24 position that all the plaintiff's firms were failing to
25 honor these management orders around the country, are

Cross - Turlik

1 you?

2 A. Correct.

3 Q. In fact, of the six plaintiffs you've identified
4 as being problematic, how many law firms does that
5 involve?

6 A. Those were two firms.

7 Q. Just two?

8 A. Yes. I'm not saying there were only two firms or
9 two groups of plaintiffs not complaining.

10 Q. Mr. Turlik, do you have any idea, and I'm
11 guessing you don't want, but I want to ask it for the
12 record. Do you have any idea what difference it would
13 make to a forecast that relies upon settlement data of
14 thousands of claims if you were to take out the six
15 settlements? Just ignore them. Exclude them from the
16 database.

17 A. Here's what you're missing. It's not just six.
18 So now what we're doing, based on this history and what
19 we have seen in a number of cases is that as part of a
20 settlement group we can make the safe assumption in the
21 litigation that we're going to see the same type of
22 failure to disclose information going forward. So it's
23 not just those six cases. It's all of those cases. And
24 so all of those cases that got an inflated value should
25 be -- should be -- would have an effect on the numbers.

Cross - Turlik

1 Q. Mr. Turlik, I'm sorry. The evidence that the
2 Court has is the six. And there's been argument about
3 this, debate about this, and various slides that the
4 Court has seen, arguably, contradicting the position
5 you're taking as to the six. But the other evidence that
6 the Court has is this volume of 537 or more, and I'm not
7 sure of the exact figure. I know it's more than 500
8 depositions pre-petition, and they're from cases that
9 were picked by the debtor and handed to their own expert
10 where the expert says he read them -- I haven't read
11 them. And he says yeah, they identify asbestos
12 insulation. So that's what the evidence is, isn't it?

13 A. No. The evidence is that -- the evidence is a lot
14 of things and you're cherry-picking one piece of
15 evidence. But the evidence is also that there were
16 disclosures in the '90s that we didn't see in the 2000s
17 that there are specific instances of failure to disclose
18 known information. And I think the evidence can be -- it
19 can be concluded from that evidence that there are more
20 than just those six cases.

21 Q. Now Mr. Turlik, I want to quickly turn to what
22 you may be an expert in and what we would probably agree
23 you're not an expert in. Now, you were responsible for
24 the East Coast; is that right?

25 A. That was my primary responsibility. Not the whole

Cross - Turlik

1 East Coast but from Virginia north --

2 Q. Okay.

3 A. -- on the coast.

4 Q. I'm not going to go through them all, but there
5 were a number of questions that Mr. Swett asked you about
6 the law and the Case Management Orders and changes in the
7 law in the states where you're responsible, but you
8 didn't know the answer. Do you remember those?

9 A. Correct.

10 Q. I mean we can't know everything, can we?

11 A. You're right there.

12 Q. But you can't tell the Court anything about, what,
13 Texas?

14 A. I can tell very little about Texas.

15 Q. California?

16 A. Very little.

17 Q. Illinois?

18 A. Very little.

19 Q. Florida?

20 A. Very little.

21 Q. Now, are those jurisdictions where a lot of
22 plaintiff's cases are brought?

23 A. Yes.

24 Q. What about Louisiana? Do you know anything about
25 Louisiana?

Cross - Turlik

1 A. Very little.

2 Q. Are you familiar with the laws on causation, the
3 standard for causation for a plaintiff to be able to
4 bring a case to a jury in the jurisdictions where you
5 were responsible?

6 A. Somewhat. Yes.

7 Q. Somewhat?

8 A. Yeah.

9 Q. But not completely; right?

10 A. What I would do when it became relevant in a case
11 is I would call the local counsel and get briefed.

12 Q. But you're here as an expert to help the Court
13 with those issues, aren't you?

14 A. Yes.

15 Q. Okay. Could you tell the Court one way or another
16 as to whether there has been a change in the law on
17 causation one way or another after the bankruptcy of the
18 debtor in Illinois?

19 A. I'm not aware of any major change.

20 Q. What about California?

21 A. I'm not aware of any major change.

22 Q. What about Louisiana?

23 A. I know very little about Louisiana. So I don't
24 know. I am aware of no major change.

25 Q. Okay. Let's pick two you do. Has there been a

Cross - Turlik

1 major change in the law on causation since the debtor
2 filed for bankruptcy as of today in Maryland?

3 A. In causation?

4 Q. Yes.

5 A. I'm not sure what you mean on causation. There
6 has been a change in the law in Maryland. Whether that
7 relates to causation, I'm not sure if that's where you're
8 going.

9 Q. And the case from last week or so?

10 A. That's the case I'm referring to.

11 Q. Right. And that supports the position that a
12 plaintiff can get to a jury with cumulative causation;
13 correct?

14 A. Correct.

15 Q. What about New York? Has there been a change in
16 the law on causation since the debtor's bankruptcy?

17 A. I'm not aware as I sit here.

18 Q. Okay. Now one of the things you say is, well,
19 look. There's all this disclosure required. This is
20 new. This is not something that happened before. It's
21 going to have an impact. So let's talk about that.

22 Case Management Orders in New York are requiring
23 disclosures. Were they in cases before the bankruptcy?

24 A. Yes.

25 Q. Okay. What About Illinois?

Cross - Turlik

1 A. I don't know.

2 Q. One way or the other, you don't know?

3 A. I don't know.

4 Q. You don't know about California?

5 A. I don't know.

6 Q. But you do know about the O'Neil case; right?

7 A. Yes.

8 Q. That's the bare metal case?

9 A. Yes.

10 Q. The case that says if you're valve manufacturer,
11 for example, and you use someone else's gasket, like
12 Garlock's gasket, well, you essentially, not entirely,
13 get a free pass.

14 A. Yeah. I think there's much more to that than
15 that. I think that's very, very simplistic.

16 Q. Now that's a bad trend, isn't it?

17 A. What --

18 Q. You would agree with me that's a bad trend for a
19 gasket defendant?

20 A. But that trend -- that case did not happen after
21 Garlock's bankruptcy. That was something that we dealt
22 with while Garlock was viable, so that's not a trend.

23 Q. Can you tell me when the O'Neil case was?

24 A. I can't give you the year.

25 Q. Okay.

Cross - Turlik

1 A. But I -- but it is very much my recollection that
2 it came out before Garlock filed for bankruptcy.

3 Q. None of that's in your report, is it?

4 A. I did not comment on O'Neil because it was -- my
5 comment was on changes -- quite frankly, I focused on
6 positive changes for Garlock since the bankruptcy. I
7 didn't focus on changes that were negative before the
8 bankruptcy.

9 Q. Okay.

10 A. Because that already existed, and that was being
11 dealt with by Garlock.

12 Q. Did you focus on any negative trends for Garlock
13 before the bankruptcy?

14 A. I did not focus on that in the report.

15 Q. Right. Because you're an advocate; right?

16 A. No, because I'm not really aware of any. The
17 change in Maryland happened after I wrote the report. It
18 happened last week.

19 Q. Okay. Now I want to focus on how important this
20 issue of disclosure was to Garlock. Because what
21 Garlock's been saying to the judge, and what you've been
22 saying to him, this is really important. Now you said, I
23 believe, in your deposition that you noticed this trend
24 once a company files for bankruptcy, well, then people
25 aren't identifying them anymore. You noticed that back

Cross - Turlik

1 with Johns-Manville, didn't you?

2 A. Yes.

3 Q. In fact, there's numerous companies that filed for
4 -- where you want bankruptcy pre-2000. And each time it
5 happened, you noticed the trend: Keene, Eagle-Picher,
6 Armstrong, Celotex, on and on and on. Do you agree?

7 A. I don't know that all those were in that period,
8 but I'll accept you're saying that.

9 Q. You said, I believe, there's a definite trend?

10 A. Trend yes.

11 Q. That was taking place pre-2000?

12 A. Yes.

13 Q. Okay. Now you know how the automatic stay works;
14 right?

15 A. Yes.

16 Q. Okay. So when someone files for bankruptcy, you
17 can't sue them anymore can you?

18 A. Correct.

19 Q. So is it a shocker to you that you wouldn't see
20 those companies being identified in complaints?

21 A. The shocker isn't that they're not named in
22 complaints because I don't think people want to run afoul
23 of the bankruptcy court judge. So that's not -- that's
24 not the shocker. It's that they weren't being identified
25 as much. And I've been -- I've stated that there was

Cross - Turlik

1 still some identification. It was a drop in the
2 identification.

3 Q. Now, even though you noticed this trend and this
4 trend had a material impact, correct, this is -- this is
5 bad for Garlock. When someone files for bankruptcy, it's
6 bad for Garlock. Would you agree with me?

7 A. In the 1990s it really didn't affect us because
8 there was still a lot of testimony and a lot of
9 identification of other viable defendants.

10 Q. So it becomes a problem post-2000?

11 A. That's when -- that's when I realized that it was
12 a problem, because now I was getting very little of the
13 identification or substantially less of the
14 identification.

15 Q. Okay. So this is an issue for you as an
16 experienced lawyer. This is what you do in asbestos
17 litigation you're seeing this drop off. You're actively
18 looking for evidence of exposure to these bankrupt
19 defendants, aren't you?

20 A. Yes.

21 Q. Okay.

22 A. Admissible evidence.

23 Q. Right. When was the first time you knew about
24 ballots?

25 A. During this bankruptcy.

Cross - Turlik

1 Q. So you weren't actively looking for ballots
2 post-2000, were you?

3 A. I can't look for something I don't know about.

4 Q. It wasn't that important?

5 A. No. I can't look for something I don't know
6 exists.

7 Q. You've got really good bankruptcy counsel.
8 Garlock had very established bankruptcy counsel that was
9 investigating and following these bankruptcy cases,
10 weren't they?

11 A. They're very good.

12 Q. Weren't you guys talking to each other?

13 A. I spoke with the bankruptcy lawyers on occasion.

14 Q. Didn't someone say to you, look, this is what
15 they're saying today. A ballot means I've got exposure.
16 That's their position to the Court. Didn't you say --
17 well, didn't anyone say to you let's get some ballots;
18 that could be helpful?

19 A. I did not say that to them. I don't know. I
20 didn't know to say that.

21 Q. Right. And you didn't do anything with 2019s
22 either?

23 A. I didn't know they existed.

24 Q. Didn't even know they existed?

25 A. Correct.

Cross - Turlik

1 Q. You're telling the Court this is a really
2 important issue?

3 A. It could be helpful.

4 Q. Okay.

5 A. That's what I'm saying.

6 Q. But you didn't even ask for it?

7 A. I can't ask for something I don't know. But now
8 that I know about it and I've seen what the wording of
9 them are, I think they would be important and helpful in
10 getting a full picture of exposure.

11 Q. Okay. So as I understand it, it's a shame you
12 didn't get them. But you didn't even ask for them;
13 right?

14 A. I didn't know to ask for them. Now I know, and I
15 would like them.

16 Q. So --

17 A. And Garlock -- I think their position is that they
18 would like them now.

19 Q. Now Mr. Turlik, you're settling cases?

20 A. Yes.

21 Q. And I said in the opening, and it's come back --
22 it's been on slides that the FCR's counsel said
23 pipefitter has exposure to insulation in 2005; pipefitter
24 has exposure to insulation in 1995. That's not a
25 shocking statement, is it?

Cross - Turlik

1 A. Correct.

2 Q. Because it's an industrial environment?

3 A. Correct.

4 Q. And there's lots of pipes and lot of insulation;
5 right?

6 A. Yes.

7 Q. You're settling cases post-2000 and plaintiff's
8 lawyer comes to you and says look, I've got a claim
9 against Garlock. I worked around insulation. I admit
10 it. Which they all did; right?

11 A. Not all.

12 Q. Well, many?

13 A. Many.

14 Q. Right?

15 A. Yes.

16 Q. And they can't remember the name of the insulation
17 product. And that's not shocking, right, because the
18 name wasn't printed on the side of the pipes was it?

19 A. In 1995 we heard about those, that they came in
20 boxes and the boxes were labeled.

21 Q. Sure. We saw the Kaylo thing. But you would
22 agree there were lots of pictures earlier in the case,
23 we're seeing them for the first time, and there's pipes
24 there and there's no writing on the pipes. Right?

25 A. Somehow they knew in 1995.

Cross - Turlik

1 Q. Because they're suing them; right? No automatic
2 stay; right?

3 A. And they identified them.

4 Q. Okay. So you settle the case. And you believe
5 that you're overpaying because you're not getting the
6 admission or affidavit, or whatever it may be, a
7 declaration, as to exposure to insulation companies.
8 Right?

9 A. Yes.

10 Q. Okay. Can you identify for the Court a single
11 settlement that you were responsible for where you put in
12 language -- language in settlement that addresses that
13 issue?

14 A. The settlement agreement has to be agreed by both
15 sides. It's not going to ever get there.

16 Q. So you never said to any plaintiff's firm, look.
17 We all know you worked around insulation. You don't
18 remember who it is. But to the extent you file a claim,
19 well, you know what? I'd like some money back from you.

20 A. Well are you saying we never said that? Because
21 we did.

22 Q. You did say that?

23 A. Yes.

24 Q. But you never -- it wasn't important enough for
25 you to get that representation and rely upon it and put

Cross - Turlik

1 it in the settlement agreement, was it?

2 A. We would have never gotten that. We had to fight
3 -- we actually had to fight -- in the case in which we
4 took a verdict, we had to fight to get the money.

5 Q. You would agree with me that the four corners of
6 the contract will reflect the intent of the parties?

7 A. As a basic tenant of contract law.

8 Q. Okay. So if I or Judge Hodges were to look at all
9 the settlement agreements, that would reflect the intent
10 of the parties in the settlement agreements wouldn't it?

11 A. It doesn't tell you how you got there.

12 Q. All right. Now when you settled, you considered
13 whether the plaintiff was alive or dead.

14 A. It was a factor.

15 Q. Okay.

16 A. In some cases. In many of the low value
17 settlements that we had it wasn't a factor.

18 Q. And you considered the age; right?

19 A. Again, on a case that was settled as a one -- as a
20 single case? Yes. In the bulk of the cases in which we
21 had an agreement? No.

22 Q. And you considered the -- now we're only talking
23 about meso cases here. That's a horrible disease, isn't
24 it?

25 A. I'm sorry?

Cross - Turlik

1 Q. We're only talking about meso cases here. That's
2 a horrible disease, would you agree?

3 A. I would.

4 Q. You considered the nature of the disease, whether
5 it was lung cancer or meso or asbestosis, whatever it may
6 have been; correct?

7 A. Actually, in some of the agreements -- no. But,
8 yes, I considered it when I had cases that were settled
9 separately.

10 Q. It was a factor.

11 A. Oh, absolutely. Sure.

12 Q. Sure. The worse the disease, the bigger the
13 settlement. Would you agree with that?

14 A. That makes some sense.

15 Q. The younger the plaintiff, the bigger the settle;
16 right?

17 A. On those individual cases? Yes.

18 Q. The more dependents the plaintiff had, the bigger
19 the settlement. Right?

20 A. Sometimes that was a factor.

21 Q. Right.

22 A. Not always.

23 Q. Now, you also considered sources of payment;
24 correct? Other payment?

25 A. Yes.

Cross - Turlik

1 Q. Right. And you considered all your legal
2 defenses, didn't you? We've spent a good six days on the
3 science. But you were fully aware of the low-dose
4 Chrysotile defense when you settled cases, weren't you?

5 A. Absolutely.

6 Q. And you took that into account?

7 A. And how successful that you would be based on the
8 record.

9 Q. Okay. So I think you said that was always
10 available to you. This wasn't impacted by that. That
11 defense wasn't impacted by --

12 A. Oh, no. The defense was heavily impacted by the
13 ability to be able to show where the actual disease. So
14 it was impacted when we couldn't show that there were
15 products that weren't of that type.

16 Q. No, I understand that. But you were able to
17 present that science defense, weren't you?

18 A. Sometimes. Well, yes. But the effectiveness of
19 it is affected by those other exposures.

20 Q. And you heard testimony, and we've seen it time
21 after time after time, where the plaintiff says, either
22 for deposition or because they're in trial, saying I was
23 under all this insulation, this snowstorm of insulation.
24 You had that, didn't you?

25 A. Yes. And what we also had -- when we weren't able

Cross - Turlik

1 to identify who it was, then we had objections that it
2 wasn't asbestos.

3 Q. Yeah. Many of these people were in the Navy,
4 weren't they?

5 A. I had a large number of Navy cases. I had
6 industrial cases.

7 Q. You're not saying that these people in the Navy
8 were lying to you, are you?

9 A. I'm not putting a label on anybody.

10 Q. Right. And sometimes you won cases; right?

11 A. Yes.

12 Q. Sometimes you lost cases?

13 A. Yes.

14 Q. Because you had trial risk; right?

15 A. Yes.

16 Q. That's what trial risk is.

17 A. Yes.

18 Q. Would you agree with me that when you weighed all
19 those factors, you put them together, you put them in the
20 hopper and made a decision whether to settle or not, you
21 were in effect evaluating the strengths and weaknesses of
22 each side's case.

23 A. When I gave the recommendations that I gave.

24 Q. The answer would be yes?

25 A. Yes, based on the knowledge and the evidence that

Cross - Turlik

1 we saw coming into court.

2 Q. Got it. Now, pre-2000 as I understand it, for
3 years in this case it sounds like Garlock was kind of
4 flying under the radar because the insulation defendants,
5 the focus was on them and they were paying plaintiffs.
6 Do you agree with that characterization?

7 A. Not a hundred percent. There were times when the
8 thermal insulation defendants settled and the plaintiffs
9 proceeded against us. I discussed the empty chair cases,
10 and that would be an example. So we were often -- we
11 were often picked up on radar.

12 Q. Now would you agree with me that because you were
13 flying under the radar you were actually paying less than
14 you should have been paying?

15 A. Well if you asked me, I think there was -- it was
16 a product that didn't cause disease. So if you asked me,
17 we shouldn't have paid anything. But because of the
18 litigation costs, we were forced to pay.

19 Q. Yeah. It's your position that Garlock had zero
20 liability; right?

21 A. Correct.

22 Q. Right. And it never should pay anything?

23 A. Correct.

24 Q. Right. Now, you said that you the bulk of your
25 work was for Garlock; right?

Cross - Turlik

1 A. Starting in 1996.

2 Q. And up till 2010?

3 A. Correct.

4 Q. And then it sort of stopped abruptly?

5 A. Yes.

6 Q. And you've been working somewhat on asbestos cases
7 since then?

8 A. Yes. Primarily on asbestos cases since then.

9 Q. Who are your clients?

10 A. I have a number of clients.

11 Q. Who are they?

12 A. I don't know how relevant that is.

13 Q. Well, it's relevant for this reason -- and if you
14 don't want to talk about it, I get it.

15 A. Okay.

16 Q. Okay? It's relevant because what you're saying is
17 you have experience post-bankruptcy that you want to
18 share with the judge.

19 A. Yes.

20 Q. So if you want to share it with the judge, I'm
21 entitled to know who they are, what you've been settling
22 at, what your arguments have been, and what -- the same
23 thing that you've said. You talked about the waiver of
24 the privilege, okay, for Garlock. I'm entitled to ask
25 that same issue for your current clients. Or you can

Cross - Turlik

1 say, look, I don't want to talk about that.

2 A. They have not waived their privilege.

3 MR. KRISKO: Your Honor, I want to enter an
4 objection. I don't think it's appropriate for Mr. Guy to
5 pry into the confidence of this lawyer's other clients.

6 THE COURT: Sustain the objection.

7 MR. GUY: Your Honor, I agree entirely. And if I
8 can't get into it, he shouldn't be allowed to testify to
9 that.

10 MR. KRISKO: I would add that if this Court is
11 going to hear testimony from lawyers in this case, this
12 issue is going to arise. I know the Committee has
13 identified at least two lawyers to come testify. And if
14 these are going to be the rules, then the waiver is going
15 to apply to them as well.

16 THE COURT: I'll sustain the objection.

17 BY MR. GUY:

18 Q. Now when a plaintiff has been deposed, they have
19 the obligation to tell the truth, don't they?

20 A. Yes.

21 Q. They have the obligation to tell what they know;
22 right?

23 A. Yes.

24 Q. And they have the same obligation in response to
25 interrogatory responses?

Cross - Turlik

1 A. I think it's a little wider.

2 Q. They still have to tell the truth.

3 A. Well the truth -- yeah, the truth is absolute.

4 Yes.

5 Q. And in Pennsylvania, are interrogatory responses
6 verified?

7 A. Yes.

8 Q. Okay.

9 A. They're supposed to be.

10 Q. Now, once a plaintiff has said I worked in an
11 industrial environment; there was lots of asbestos there;
12 people took it off, removed it and it created a lot of
13 dust. But it was 40 years ago and I cannot, for the life
14 of me, remember who made it.

15 Once a plaintiff has said that, do you believe
16 it's the law that -- let's just focus on Pennsylvania
17 because that's what you know about -- that it's the law
18 that the plaintiff then has to go further than that, do
19 an investigation, find out whose products were there and
20 then sign an affidavit and hand it to you, the defendant,
21 and say oh, by the way, I'd just like to help you out
22 because I've done this additional work -- I couldn't
23 remember. I've done this additional work and I have a
24 good faith reason to believe that I was exposed to these
25 products because they were at this job site, but I can't

Cross - Turlik

1 remember the name. Or is that your burden?

2 A. I think it's interesting that you use that
3 example. Because if you do have that affidavit, you need
4 to give it over to us.

5 Q. I get it on the affidavits. Mr. Turlik, I get
6 it. But I'm asking you -- and that's -- how many
7 situations do you have where, out of the thousands and
8 thousands of cases that you've been able to point the
9 Court to, a plaintiff signed an affidavit saying I was
10 exposed to these products, and then at the same time they
11 were telling you that they weren't? How many of those do
12 you have?

13 A. You know, that's the thing about having these not
14 disclosed to us in advance, and then once the case is
15 over us not getting them. So I don't know how many there
16 are.

17 Q. How many do you have that you've got in discovery
18 that you can share with the Court?

19 A. I've shared those that I know of right now.

20 Q. The six?

21 A. But I'm not -- I am not saying that that's all
22 that there are.

23 Q. Okay. So I want to separate out those. I want to
24 ask you specifically if you can advise us -- under
25 Pennsylvania law, is it an obligation of the plaintiff to

Cross - Turlik

1 generate an affidavit based on something they don't know
2 and wouldn't know, and hand it to the defendant? Or is
3 it the defendant's burden to show that another company
4 was responsible for the plaintiff's exposure?

5 A. It's the defendant's burden to show that, but it's
6 also the plaintiff's burden to disclose information that
7 he has.

8 Q. It's the plaintiff's burden to be truthful; right?

9 A. And to give disclosure.

10 Q. To be truthful?

11 A. Yes.

12 Q. No further questions, Your Honor.

13 THE COURT: Okay. Mr. Krisko.

14 MR. SWETT: Your Honor, Mr. Krisko has obliged me
15 by allowing me to ask about a couple of documents. The
16 first is.

17 THE COURT: All right.

18 **CROSS-EXAMINATION**

19 By MR. SWETT:

20 Q. ACC-315. Mr. Turlik, this is a trial evaluation
21 form, Garlock and Fairbanks Morse Engine, Northampton
22 County, Pennsylvania case, August 2008. Do you see that?

23 A. Yes.

24 Q. This was prepared by your firm?

25 A. Yes.

Cross - Turlik

1 Q. Your general practice was to prepare these 30 to
2 60 days before trial?

3 A. I believe so.

4 Q. And this has the Dominy, Dougherty case and the
5 Messinger case?

6 A. Yes.

7 Q. And for the Dominy and Messinger cases over in the
8 column "Product ID," it says in both instances, ID of
9 plaintiff's deposition?

10 A. Yes, it does.

11 MR. KRISKO: Your Honor, if I may. And counsel,
12 excuse me just for interrupting. I just want to make
13 clear for the record that this is one of the documents
14 that the debtors' objected to in production, and we want
15 to preserve our continuing objection.

16 THE COURT: I note that.

17 MR. KRISKO: Production and use of this document.

18 BY MR. SWETT:

19 Q. The entry and product ID column for Mr. Dougherty
20 is "no ID;" correct?

21 A. Yes. At 30 to 60 days before the trial, there was
22 no ID. What happened in that case is on the eve of trial
23 they presented a witness and they presented him after the
24 deadlines. We refused to accept the deposition and moved
25 to strike him. The judge allowed him to testify. I

Cross - Turlik

1 tried to get the trial testimony and it was unavailable
2 to me. But I did get that gentleman's discovery
3 deposition. We had that discovery deposition and he did
4 identify Garlock.

5 Q. We've already seen the verdict where there was no
6 -- no finding against any of the defendants on any issue?

7 A. I don't know that there were any defendants in the
8 other room other than Garlock. I don't know one way or
9 the other.

10 Q. Of the three or four people listed on the verdict
11 sheet?

12 A. Correct.

13 Q. Okay. Now the next document is GST-EST 016634.
14 You don't have it. Go to the document that has 634 at
15 the end of it in the GST series. I'll just ask the
16 question. You remember about the discovery supposedly in
17 the Blandford case after remand of a Eagle-Picher claim
18 form that had been submitted before the case went to
19 trial.

20 A. Not really. No.

21 Q. That's one of Garlock's contentions. Are you
22 aware of that?

23 A. That is one of their contentions. I'm not aware.

24 Q. So you wouldn't be aware also that that claim was
25

Redirect - Turlik

1 denied by the individual trust?

2 A. I don't know.

3 Q. Your Honor, I have to move in a bunch of
4 documents. I can do that after review of the transcript
5 to make sure I get the exhibit numbers right, or I can do
6 so now.

7 THE COURT: Why don't you do it after so we know
8 what the numbers are.

9 THE COURT: All right. Mr. Krisko.

10 **REDIRECT EXAMINATION**

11 BY MR. KRISKO:

12 Q. Your Honor, redirect.

13 Mr. Turlik, we have been talking some about the
14 Blandford case. And I know that that case was tried more
15 -- maybe more than 10 years ago, or almost ten years ago,
16 but --

17 A. Yes.

18 Q. -- I do have some questions about some of the
19 documents that Mr. Swett asked you about.

20 Q. I'm sorry. I apologize, Your Honor. I need to
21 project documents. So I'll be seated, if that's okay.

22 THE COURT: That's fine.

23 BY MR. KRISKO:

24 Q. Mr. Turlik, we're looking at document GST-1881.

25 A. Okay.

Redirect - Turlik

1 Q. Can you see that? And can you tell us what that
2 is?

3 A. It looks as if it's Plaintiff's First Supplemental
4 Answers to Defendant's Master Consolidated Discovery
5 Request to Plaintiffs.

6 Q. Okay. And I think this was a document that
7 Mr. Swett showed you a portion of.

8 A. Okay.

9 Q. You might remember that he showed you this list
10 of, it looks like contractors and suppliers. Do you
11 remember that?

12 A. Yes. There's reason to believe not that there was
13 exposure to them, but there's just reason to believe.

14 Q. Okay. And was there anything else you wanted to
15 add about this particular interrogatory and whether or
16 not it was useful to Garlock in the Blandford case?

17 A. It was of no use to us.

18 Q. Okay.

19 A. It told us nothing other than who the suppliers in
20 that region were.

21 Q. Okay. And this portion of interrogatory, was it
22 focused just on suppliers and not on products?

23 A. Correct.

24 Q. Now looking at the next page, which is
25 GST-EST016-6500. I'll zoom in so you can see a little

Redirect - Turlik

1 better.

2 A. I can see.

3 Q. Oh, you can? Can you describe what this page is
4 providing in terms of interrogatory response?

5 A. It appears to identify every single product that
6 was made.

7 Q. Okay.

8 A. That contained asbestos, or at least a huge list.
9 The first page only goes to F. So, there's tons. Again,
10 it's a reason to believe. It tells us really nothing.

11 Q. Okay. And did you say whether or not this
12 document would be admissible?

13 A. It would not be admissible.

14 Q. Okay. You pointed out that this document has a
15 number of what looks like products and defendants
16 identified, and it continues down to the bottom of that
17 page. Is that correct?

18 A. Yes.

19 Q. Let's look at the next page. What's on this page?

20 A. F through M.

21 Q. Okay. What's on this page?

22 A. M to W.

23 Q. Okay. And then there --

24 A. W's.

25 Q. Did the exposure ID witness that was testifying

Redirect - Turlik

1 for Mr. Blandford testify about exposure of his father
2 to all of these products at trial?

3 A. No. Not even close.

4 Q. Now in the Garlock's experience, would it try to
5 identify co-workers to try to develop exposure evidence?

6 A. Yes, we would.

7 Q. Is it the obligation of a plaintiff, when asked,
8 to identify co-workers who might have knowledge about
9 their claims?

10 A. Yes.

11 Q. Okay.

12 A. That was one of the ways we would try to get
13 additional information.

14 Q. Okay. Do you know whether any co-workers were
15 identified in this interrogatory?

16 A. From what he showed me earlier, I think a large
17 list.

18 Q. Okay. Let's look and see if that's the case. I'm
19 paging through the document now. Let's look here. This
20 is a job at the Standard Plumbing and Heating Company.

21 A. Okay.

22 Q. I'll zoom in. Are these co-workers that are
23 identified?

24 A. These are 40 co-workers on that page.

25 Q. Okay. I think it continues over to the next page,

Redirect - Turlik

1 doesn't it?

2 A. Yes. We're up to a hundred.

3 Q. Okay. And does it continue on to the next page?

4 A. 161.

5 Q. Okay. How about the next page?

6 A. We're up to 218.

7 Q. Okay. Let's go on to the next page.

8 A. 273.

9 Q. Okay. Was this kind of disclosure meaningful in
10 terms of allowing Garlock to develop its case against
11 Mr. Blandford?

12 A. Absolutely not.

13 Q. Okay. Let's look and see if there's any other
14 co-workers identified in these interrogatories. And,
15 again, I'm paging through. Now we're looking at the page
16 GST-EST 016-6525.

17 A. It looks like we're up to 313.

18 Q. Okay. So in these interrogatories, plaintiff's
19 counsel has continued to number consecutively the number
20 of co-workers that are listed in this interrogatory
21 response?

22 A. Yes, that appears to be so.

23 Q. Okay. Let's continue through and see how many in
24 total plaintiff's counsel identifies. What's on this
25 next page?

Redirect - Turlik

1 A. 373.

2 Q. Okay. To save the Court time, I'm going to page
3 down through and see if we can find the total number of
4 co-workers that were identified by plaintiff's law firm
5 in this case.

6 A. We're in the 2000s now.

7 Q. I think I may have reached the end of the
8 identification of co-workers. Can you tell me
9 approximately how many co-workers have been identified in
10 this response?

11 A. 3,578.

12 Q. Okay. Is the identification of 3,578 co-workers a
13 useful discovery response to Garlock?

14 A. Not at all.

15 Q. Okay. Mr. Swett was talking about the Blandford
16 case. I think he read a portion of co-counsel's
17 statements at a hearing concerning the identification of
18 products that were manufactured by bankrupt companies.
19 Do you remember that?

20 A. Yes.

21 Q. And what did -- what was co-counsel's name in that
22 instance?

23 A. Matt O'Connell.

24 Q. Okay. Was he talking about Garlock's case and
25 what the kind of evidence that it needed to present at

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1 trial?

2 A. I think he was attempting to.

3 Q. Did he say -- we can pull up the transcript if
4 necessary. But my memory of what Mr. Swett showed us on
5 the screen was that Mr. O'Connell said that what was
6 important to Garlock was that it identified the full
7 spectrum of exposures that a plaintiff may have had.

8 MR. SWETT: Objection. That mischaracterizes it.

9 MR. KRISKO: All right. Do you recall that?

10 MR. SWETT: He said he wanted to be able to talk
11 about all the exposures throughout the record.

12 BY MR. KRISKO:

13 Q. Let me ask you this. Was it important to Garlock
14 to have a full picture of the a claimant's asbestos
15 exposures?

16 A. Always. In every case you want the full picture.
17 Because, remember, both for the low-dose, the Chrysotile,
18 the combination of those two defenses, what we need is to
19 show the massive exposures to the other products in their
20 entirety. So we always want all the information.

21 Q. Okay. Were there trust claims produced by
22 Mr. Blandford's counsel to Garlock during the pendency
23 of this case?

24 A. I don't remember but I -- but based on the things
25 I read, we may have had the Kaylo, the Owens Corning, but

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1 I don't know that.

2 Q. Okay. Did Mr.-- Mr. Swett showed you the
3 transcripts of -- the closing argument transcript that he
4 showed you was dated November 20, 2003. Does that sound
5 about right in terms of the timing of the trial?

6 A. I remember it was 2003 and it was before
7 Thanksgiving.

8 Q. Okay. This is GST-1878. Okay. Mr. Turlik, can
9 you look at this document and tell me if you know what it
10 is?

11 A. It appears as to be a fax transmittal form from
12 his -- from Mr. Blandford's lawyers to Celotex --

13 Q. Okay.

14 A. -- to the Celotex trust.

15 Q. Okay. What is the date on that?

16 A. November 7, 2002.

17 Q. Okay. Was that before the Blandford trial?

18 A. Yes, it was.

19 Q. About how long?

20 A. A year.

21 Q. Okay. I'm looking at page GST-EST 166359. Is
22 there -- this appears to be a trust claim form to the
23 Celotex trust filed by Mr. Blandford. Can you tell me
24 if that's right?

25 A. Yes.

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1 Q. Is there any information displayed on the screen
2 that would have been helpful to Garlock in its case
3 against Mr. Blandford?

4 A. There was an acknowledgment that he was exposed to
5 insulation from this company; that he breathed the dust
6 generated by the tear out of that insulation.

7 Q. Okay. Would that information have been helpful to
8 Garlock?

9 A. The more information we have, the more helpful it
10 is.

11 Q. Let's look at the top of this page. Let me ask
12 you. Is any of that information helpful to Garlock in
13 terms of defending a case?

14 A. Yes. It shows that he was exposed to the Celotex
15 material from January 1, 63 to 1990. So that's an
16 extensive period of time. It would show a larger
17 exposure than were given by his son.

18 Q. What was the disposition of the first trial on
19 appeal?

20 A. What happened was the court ruled that Garlock was
21 prejudiced by certain conduct of the plaintiff.
22 Specifically, we were not given a deposition of their
23 expert witness, Mr. Longo, but Mr. Longo was called at
24 trial as a rebuttal witness. The Court ruled that we
25 were surprised by that. He was also able to produce

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1 various exhibits, his video to the jury, but we were not
2 permitted to do that. We weren't given time to do it.
3 The appellate court found that we were prejudiced and
4 vacated the verdict and remanded it for new trial.

5 Q. Okay. So is it fair to describe the appellate
6 court's review of the Blandford verdict as identifying
7 procedural errors?

8 A. I think it was more than procedural.

9 Q. Okay. How would you further describe it?

10 A. I would describe it as an error -- procedural
11 almost sounds like technical. And they made a finding
12 that we were prejudiced -- we were prejudiced by allowing
13 Mr. Longo to do things we weren't allowed to do; and
14 then doing it as a surprise witness at the end, and us
15 not get any opportunity to rebut him.

16 Q. Can we draw any conclusions from the verdict that
17 was obtained in the first trial, given the appellate
18 court's view of those circumstances?

19 A. No. Other than that we were prejudiced at the
20 trial.

21 Q. Now, I think you mentioned that the amount of the
22 initial verdict was \$6.4 million?

23 A. Yes. I believe that's correct.

24 Q. All right. And did you also say that Garlock
25 ultimately settled the case on remand?

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1 A. Yes.

2 Q. Okay. Can you describe -- I know you've mentioned
3 something about that settlement but I don't think you've
4 had a full chance to explain --

5 A. Yes.

6 Q. -- the circumstances of that resolution?

7 A. We had a year to year settlement with that law
8 firm, Your Honor. And what happened is that there was
9 money left over. So that money was just allocated to
10 Mr. Blandford. So that wasn't any fresh money that
11 Garlock had to account for.

12 Q. From Garlock's perspective, was it committing any
13 additional funds to resolve that case?

14 A. No. No new monies.

15 Q. Was whatever compensation given anywhere close to
16 the verdict that was initially awarded?

17 A. It was magnitudes lower.

18 Q. Okay. Mr. Turlik, you described in your
19 testimony with Mr. Swett, the two deposition -- the two
20 times you were deposed in this case.

21 A. Yes.

22 Q. Do you remember that?

23 A. Yes.

24 Q. And I want to ask you about the first deposition.
25 First of all, do you recall when that deposition

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1 occurred?

2 A. Yeah. January of this year, I believe.

3 Q. Okay. And did Committee counsel and counsel for
4 the future claimants' representative have an opportunity
5 to ask you about how you evaluated settlements?

6 A. Yes.

7 Q. Okay. And did you provide answers?

8 A. Yes.

9 Q. Would you describe your answers as describing,
10 generally, your approach to resolving cases?

11 A. Yes.

12 Q. Did they have an opportunity to ask you in a
13 general sense about other factors such as trial risk or
14 other assessments of cases?

15 A. Yes. We discussed those things, also.

16 Q. Do you recall whether there was any objection
17 given by Garlock to you providing testimony in a general
18 sense on those subjects?

19 A. I don't remember any objections, and I do remember
20 testifying as to that generally.

21 Q. Okay. Let's talk about your second deposition.

22 A. Yes.

23 Q. Do you remember that?

24 A. Yes.

25 Q. Okay. Did that deposition occur after this court

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1 made a ruling compelling Garlock to produce you for
2 deposition and to bar Garlock from interposing any
3 objections on privilege grounds as to a certain list of
4 cases?

5 A. I need to -- I, unfortunately, need to correct you
6 a little bit. They never compelled me to attend. We
7 always were going to present me as a witness. The order
8 dictated that I had to give certain additional
9 information.

10 MR. SWETT: Objection. I think you're misstating
11 the order, Mr. Krisko. It went to the 30(b)(6) witness.
12 We were permitted to depose a 30(b)(6) witness on the
13 MEAs and TEF without position.

14 BY MR. KRISKO:

15 Q. The record will speak for itself. But I do
16 believe the order addressed you, Mr. Turlik, by name in
17 terms of the information that the committee and the FCR
18 were going to be allowed to obtain in discovery at your
19 deposition.

20 A. That's what I remembered. And I had reviewed Your
21 Honor's order so that I could comply with it.

22 Q. Right. Mr. Swett showed you a trial evaluation
23 form. Remember that?

24 A. Yes.

25 Q. Was that one of the documents that Garlock

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1 objected to the production of on privilege grounds?

2 A. Not at my deposition.

3 Q. Right. But previously to that?

4 A. I believe so.

5 Q. Okay. Do you have an understanding whether or not
6 the production of that document was compelled over
7 Garlock's objection?

8 A. Yes.

9 Q. Okay. And was your understanding that --

10 A. That's what Garlock provided it.

11 Q. Were you asked about trial evaluation forms at
12 your second deposition?

13 A. Yes.

14 Q. Okay. And did the Committee and the future
15 claimant's representative ask any questions of you that
16 Garlock objected to on privilege grounds?

17 A. I don't remember any.

18 Q. Okay. Did Committee counsel and the FCR ask you
19 questions about the -- some of the cases that we've
20 discussed or that you discussed on your direct?

21 A. Yes. I answered questions on various of the cases
22 that we discussed on my direct testimony.

23 Q. Did they ask you about Massinger?

24 A. I believe so. Yes.

25 Q. Did they ask you about the Golini case?

Recross - Turlik

1 A. Yes.

2 Q. Did they ask you about Dougherty and Messinger at
3 your deposition?

4 A. Yes

5 Q. Okay. Is it possible that other cases were
6 inquired of you at your deposition?

7 A. Absolutely. The deposition went on for all day.

8 Q. Okay. No further questions, Your Honor.

9 MR. SWETT: Brief recross, Your Honor.

10 THE COURT: All right. You can do it quickly.

11 **RECROSS EXAMINATION**

12 BY MR. SWETT:

13 Q. ACC-730 please. This is the Eagle-Picher trust
14 transmittal form from Baron & Budd of November 2002 and
15 there's a check that says original proof of claim.

16 Go to the next page please and the next one after
17 that. Clarify the middle of the page. Sorry next page
18 after that. I'm going to try to get to the page that has
19 333 as the last digits of the number. This is something
20 you testified about on redirect. This is the statement
21 of the basis and it says Eagle-Picher insulation and it
22 says, "See attached work history sheets?"

23 A. Wait. I see it at the top.

24 Q. "Employer: See attached work history sheets."

25 "Site for location: See attached work history

Recross - Turlik

1 sheets."

2 "Plant or site names: See attached work history
3 sheets."

4 A. I also see proof of Eagle-Picher product must be
5 enclosed.

6 Q. You got work history sheets in the discovery;
7 correct? We went through that and you complained there
8 were too many co-workers identified. Those are work
9 history sheets; correct?

10 A. I believe so.

11 Q. Okay. And the assertion is all over the site, and
12 it mentions the Super 66 insulating.

13 A. Yes. It says, "Specifically the name of the
14 Eagle-Picher product to which the injured party was
15 exposed: Super 66 insulating cement, fireproof cement."

16 Q. Do you have -- do you remember in the complaint --
17 I'm sorry. In the first supplemental response to
18 interrogatories, which is GST-1881, the Attachments to
19 this supplemental response, third page in please. Next
20 one. This one.

21 A. Yeah. The difference between those two documents
22 is this is reason to believe. And the previous one is
23 the actual claim form, it's actual exposure. Very, very
24 big difference there, sir.

25 Q. Let's take a look at the page of the same document

Recross - Turlik

1 that ends in 573. One of the claim forms that
2 Mr. Krisko pointed out to you on redirect was the
3 Celotex claim form; correct?

4 A. Okay.

5 Q. And this -- this is an actual discovery response
6 here. This is not a reason to believe. This is an
7 answer to an interrogatory, and it specifically
8 identifies Carey pipe insulation. Right?

9 A. Yes. Still not admissible.

10 Q. Do you know if the Celotex trust is responsible
11 for Carey?

12 A. Yes.

13 Q. Okay. Now let's go to the document numbered
14 ACC-731. This is a submission transmittal form from
15 Baron & Budd to the Eagle-Picher trust, April 2004. This
16 is after the trial; correct?

17 A. Yes.

18 Q. And the submission says it's going to attach
19 other, not the original proof of claim form?

20 A. Okay.

21 Q. And we go to the next page and we see down below
22 he's identifying insulation. He's giving specific
23 employers now consistent with the trial testimony. And
24 he's giving Timken Bearing Division, Dueber Plant.
25 That's the place that we talked about with the miles and

Recross - Turlik

1 miles of pipe. Correct?

2 A. Yes.

3 Q. And he's specifying Eagle-Picher Hylo pipe
4 covering and Eagle-Picher Super 66 insulating cement.
5 Correct?

6 A. Yes.

7 Q. On the next page he is enclosing a copy of a
8 letter from the Eagle-Picher trust dated May 6 of 2003.
9 We reviewed this individual review claim under the
10 applicable Eagle-Picher industry personal injury
11 settlement trust claims resolution procedures. We've
12 considered all the information provided. Based on this
13 information, we are unable to validate this claim. The
14 claim is missing required information and has been
15 disallowed for the following reasons.

16 It complains that they need the beginning and
17 ending dates?

18 A. Yes.

19 Q. And then they need all available evidence that
20 conclusively demonstrates the presence of EPI asbestos-
21 containing products at the site and so forth. Do you see
22 that?

23 A. Yes. So they're asking for additional
24 information. But the acknowledgment of the exposure to
25 those products was still there. And whether or not

Recross - Turlik

1 Celotex rejected the claim for technical reasons that
2 could be later fixed really is of no moment.

3 Q. Do you think that the failure to provide evidence
4 that conclusively demonstrates the presence of the
5 product at the site is a technical matter?

6 A. They are requiring additional proofs other than
7 the statement.

8 Q. And that's for a trust payment?

9 A. Yes.

10 Q. And you think that the documents that they
11 rejected would have put the plaintiff in the breathing
12 zone of Eagle-Picher product?

13 A. No. What they were -- it was -- it appears to be
14 just a technical failure to attach a document to the
15 form.

16 Q. Thank you, Judge. Thank you, Mr. Turlik.

17 THE COURT: You may step down. Thank you,
18 Mr. Turlik.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Let's take a break until 4:35.

21 (Off the record at 4:25 p.m.)

22 (On the record at 4:36 p.m.)

23 MR. CASSADA: Your Honor, we're continuing with
24 the testimony of Rick Magee.

25 THE COURT: All right.

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1 MR. CASSADA: Your Honor, excuse me, the direct
2 examination.

3 THE COURT: Now can we open things back up?

4 MR. CASSADA: Yes. We don't expect anything will
5 cover --

6 THE COURT: Have you told anybody that's outside?

7 (Back in open court.)

8 (Witness duly sworn at 4:37 p.m.)

9 MR. CASSADA: Your Honor, while Mr. Magee is
10 taking the stand. We do have a scheduling concern. As I
11 had told you, we hoped to get through Mr. Magee today
12 and get him completed and tomorrow have
13 Drs. Gallardo-Garcia and Bates present our estimation.
14 We are running out of time in our case and we're very
15 concerned about that. We are thinking that maybe
16 tomorrow we should devote that day to
17 Drs. Gallardo-Garcia and Bates, and then continue
18 Mr. Magee next week. But we definitely we need a chance
19 to get those witnesses on. And then we'll have to have
20 an opportunity for some rebuttal from some of those same
21 witnesses and some others after the Committee and the
22 futures present their estimation case.

23 THE COURT: Okay. Good. That will be fine.

24 MR. CASSADA: Okay.

25 MR. GUY: Your Honor, when we will finish

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1 Mr. Magee? I realize that he's on and off. I'm trying
2 to get an idea.

3 THE COURT: Well, we can do it however you want.
4 You know one -- one way would be to continue him on
5 Monday and then, you know, just see where we are. I
6 think that might -- that would seem to make more sense to
7 me. If we get to the end, I mean, I fully expect you-all
8 to have the days that we allotted to you. If we have to
9 lop over into another week, we'll just have to come back.
10 We will have to come back to some place other than this.
11 I don't want to do that. But if we have to do that, we
12 have to do that.

13 MR. GUY: Thank you, Your Honor.

14 THE COURT: I'll let you all think about that
15 between now and then, and we'll see where we can go.

16 MR. CASSADA: Thank you, Your Honor.

17 **DIRECT EXAMINATION CONTINUES**

18 BY MR. CASSADA:

19 Q. Mr. Magee, before we move forward, let's have a
20 brief recap of your previous testimony. First, you
21 described the way that Garlock settled claims before you
22 arrived in 2002. You may recall you were looking at
23 Garlock's experience through, I think it was the end of
24 the year 2000. Can you -- starting in 1990s, can you
25 describe Garlock's settlement experience and claims

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1 resolution experience during that -- during the 1990s?

2 A. Yes. We put this slide back up. That is pretty
3 much what we had up to begin my testimony last Friday,
4 with one exception. Last Friday we showed it to
5 demonstrate what I inherited when I arrived in 2001.
6 This shows what we'd call the pre-bankruptcy wave, which
7 is the Garlock's claims resolutions in the 1990s.

8 As you see and as we talked about, it was mostly
9 about Garlock resolving large numbers of nonmalignancy
10 claims and other claims. But mostly nonmalignancy
11 claims, large numbers at very low values. You see \$1,000
12 to \$2,500 per claim annual average. And again, we talked
13 about how that's just to set the stage of what was going
14 on. This -- obviously, this is about -- this is about
15 Mesothelioma claims. So we thought it appropriate to put
16 another slide up that demonstrated Mesothelioma claims in
17 that same time period.

18 Q. Now, also when we finished last Friday, you were
19 describing the bankruptcy wave and impact it had on
20 Garlock's defense costs and trial risk. Would you please
21 describe Garlock's fundamental defense to Mesothelioma
22 claims?

23 A. I will. You've got this slide up here now, so I
24 probably should talk about the fact that it addresses the
25 fact that in that same time period through the '90s

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1 Garlock was also resolving Mesothelioma claims. And this
2 demonstrates that the average per year per claim annual
3 average varied from \$2,000 per claim to \$8,500 per claim.
4 And you could see it was still resolving large numbers
5 relatively large numbers for Mesothelioma claims.

6 In fact, in the year 1997 Garlock resolved almost
7 900 Mesothelioma claims, which was not much different
8 than the numbers that it was resolving in the 2000s when
9 it was resolving 1,000, 1,100 Mesothelioma claims a year.
10 So despite the fact it was mostly about nonmalignants,
11 because so many dollars were going to those in total,
12 Garlock was resolving a large amount of Mesothelioma
13 claims in this time period at low values.

14 Then, yes, what happened after '99 and what was
15 going on when I arrived was the bankruptcy wave that
16 began in 2000 and 2001.

17 Q. Did the defense that Garlock offered in
18 Mesothelioma cases change in terms of what the core of
19 the defense was from the '90s to the 2000s?

20 A. No. The defense was always -- as we described
21 last Friday, the defense was always first about Garlock
22 demonstrating that its products didn't cause disease. We
23 talked about that last week. It was a gasket first and
24 foremost. The defense was that its products didn't cause
25 disease and, secondly, and importantly, was the bucket in

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1 the ocean; the fact that its product didn't cause disease
2 and that in pointing to and identifying what products
3 did. Obviously, it could demonstrate the bucket. It
4 also needed to demonstrate the ocean, and that's what we
5 did. That was Garlock's defense at trial all the time.

6 Again, we talked about how it was a few -- only a
7 few cases that went to trial, because Garlock's strategy
8 what was mostly about resolving claims for low dollar
9 amounts to avoid costs.

10 Q. Now, we've heard suggestions from the Committee
11 and the futures rep that the evidence of alternative
12 exposures, particularly the bankruptcy, was not important
13 to Garlock's defense of claims at trial and settlement.
14 What's your reaction to this suggestion?

15 A. Again, people involved in litigation knew that's
16 what the litigation was about. The litigation was about
17 exposures. It was about -- it was about relative
18 exposures. Garlock could demonstrate that its product
19 was a gasket and that there was very little exposure from
20 a gasket. As long as it could demonstrate that there was
21 significant exposure from dangerous products, it could
22 demonstrate what the -- what the cause of the disease
23 was. So it was always a key. So my reaction is that
24 that's just -- it's not true. It's not correct.

25 Q. Yes. Actually, we have some videos of the

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1 plaintiffs' lawyers whose depositions we took in this
2 case where they addressed this very issue and talk about
3 the importance of those cases. We'd move those to the
4 tail end of the examination so they can all be in the
5 same time period so we don't have to close the court.

6 Now, did there come a time -- we've also heard
7 about this some from the Committee and the future's rep
8 that there was some point in time where the plaintiffs'
9 lawyers improved the case against Garlock and that that
10 somehow made Garlock more vulnerable to trial risk.
11 Could you comment on that?

12 A. I can. I guess it depends on how you define
13 "improve the case." But certainly, the case was more
14 effective. And so I guess in one sense it was improved.
15 Before -- before the bankruptcy wave I just want to talk
16 about what my perception, my perception of what the
17 plaintiff's case was against Garlock, again, a gasket
18 manufacturer. And so how do you -- how do you try to
19 demonstrate that that gasket manufacturer had liability?
20 And my view of that was that it was always about what I
21 call false inferences first and foremost.

22 And when I talk about false inferences, I think
23 the best examples of that are some of the things we've
24 seen here. Plaintiffs' lawyers would bring in these MSDS
25 sheets, the Material Safety Data Sheets we talked about

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1 during so much of the first phase of this case. And they
2 do that to try to confuse the jury to think that
3 exposures to raw asbestos fibers in a manufacturing
4 facility was the same as exposure to the gasket products.

5 So as you know, those -- and as I think it was
6 demonstrated, those Material Safety Data Sheets came
7 about as a result of the Hazardous Communications Act in
8 1978. They were a requirement that had been -- was
9 incorporated to OSHA. So it was something Garlock had to
10 do to put those in place. But they were warnings about
11 the substance, what was the requirement of the Hazardous
12 Communications Act and requirement of OSHA was; that if
13 you used a substance in your product. In that case it
14 was the fact that Garlock used asbestos in its product.

15 If you used that substance because -- because that
16 substance was one of those substances that was on the
17 list, you had to have those Material Safety Data Sheets.
18 So that got used to say, okay, they're acknowledging the
19 products are dangerous. But if you read the sheet, it
20 says the product's not dangerous. But it's about the
21 substance and if you use that product. Then they were
22 trying to convince the jury that that meant Garlock was
23 acknowledging that its product was dangerous. So that's
24 how that -- when I talk about false inferences, that's
25 what I'm talking about.

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1 They also use Garlock's attendance at seminars and
2 the like where the dangers of raw asbestos were talked
3 about as meaning that Garlock should have known its
4 product was dangerous. As you know, we still believe
5 that Garlock's product wasn't dangerous. Certainly the
6 raw crocidolite asbestos fibers, some of which were in
7 the facility, were dangerous, and Garlock took
8 precautions, and we believe was a leader in safety for
9 that. But those are the things I'm talking about as
10 false inferences that were created as part of the case to
11 try to confuse the jury.

12 Q. What other parts of the case did you see from
13 plaintiffs?

14 A. Again, my perception was that it was also about
15 junk science to confuse juries about what science was.
16 And the best example I've got of -- and that became much
17 more important in the 2000s. And while I know
18 everybody's heard plenty about science and don't want to
19 hear anything about science anymore, I want to -- from my
20 perspective, what was I seeing, and it was sort of point,
21 counterpoint on the science.

22 But an important thing, and we believe the reason
23 that we failed in front of some juries -- a couple juries
24 late in the '90s -- was a video that Dr. Longo had
25 produced to demonstrate with Tyndall Lighting fiber

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1 release from a gasket into the air. And there was --
2 there was success with that video at trial. And so
3 Garlock obviously had to spend money to deal with what we
4 believed was junk science. And how did they spend that
5 money? They got one of their industrial hygienists to do
6 a Tyndall Light video on a bare flange, no gasket on the
7 flange, to demonstrate with Tyndall Lighting that a bare
8 flange, when wire brushed, creates dust because there's
9 dust in the air.

10 And if you show with Tyndall Lighting the amount
11 of dust, and I believe we'll show this video while I'm
12 talking so Your Honor can see that with a bare flange,
13 even with -- the one on the right is Mr. Spencer's
14 video. Right now the Tyndall Lighting is not on. Now
15 you see Dr. Longo's video on the left where there is a
16 gasket, gasket residue on the flange. And then you see
17 Mr. Spencer's video on the right where it's a bare
18 flange. There's no gasket on that flange at all, but
19 with Tyndall Lighting you can demonstrate that there.

20 So that was Garlock spent money to do that. The
21 first time the jury saw the split screen video, it
22 laughed. And Garlock defends that case. But Dr. Longo's
23 video had been successful in cases, I know I was in the
24 room, but I know there was talk about the Blandford case.
25 And one way plaintiffs improved their case against

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1 Garlock was when this became available and Mr. Spencer
2 could come in and rebut Dr. Longo's video and it was no
3 longer effective. So what did Baron and Budd do in that
4 case? They did not have -- actually, they withdrew
5 Dr. Longo from their witness list. He was not on their
6 witness list. He did not testify in the case in chief.

7 And then after Garlock was through with its case,
8 they brought Dr. Longo in on rebuttal and he showed that
9 video on rebuttal. The jury saw that video and returned
10 a verdict and that -- that was the technical ground on
11 which Blandford was reversed, that that was inappropriate
12 rebuttal testimony because Garlock didn't get to answer
13 that video. So that was the technicality upon which
14 Blandford was overturned.

15 Q. So in Blandford, the Longo video was offered on
16 rebuttal. And just to be clear, what did that mean about
17 Garlock's ability to show -- to reveal that the video
18 really didn't show anything by showing the bare flange
19 video?

20 A. Well, Garlock's scientists were gone. Garlock had
21 finished its case. Garlock had finished its defense. It
22 couldn't get this video, the side-by-side video
23 authenticated and into the case. So it just had to
24 cross-examine Dr. Longo about the video.

25 Q. Now, did you -- did Garlock see the false

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1 inferences and junk science in the 1990s when it was so
2 successful in trying cases and paying less than -- I mean
3 just a few thousand dollars on a Mesothelioma claim?

4 A. Sure it did. Obviously that was before my time,
5 but I heard stories about it. The things that happened
6 to improve the case were things like the moved because of
7 the Spencer video -- moving, trying to move Dr. Longo's.

8 MR. SWETT: Objection. Hearsay. This is not an
9 expert.

10 MR. CASSADA: Your Honor, the allegation as we
11 understand it from the committee and FCR is that
12 Garlock's -- the basis for Garlock's settlement of
13 claims, all of this is relevant to Garlock's state of
14 mind.

15 MR. SWETT: Then you need to bring a witness who
16 has knowledge of what he's recounting.

17 THE COURT: I'll overrule the objection. Go
18 ahead.

19 THE WITNESS: I apologize. I've sort of lost my
20 train of thought. Anyway, I think we were talking about
21 the fact that it was used. Now this video, I think, was
22 first produced in the late 1990s, like 1998, the Longo
23 video. So we're talking about things that were happening
24 right after that. But the first time it was used in
25 rebuttal was in the Blandford case, which was after I had

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1 arrived and well into the bankruptcy wave. It was also
2 used that way again, by the way, in the Treggett case,
3 which is the largest adverse verdict that Garlock ever
4 had.

5 BY MR. CASSADA:

6 Q. What was the most significant change in the
7 Mesothelioma plaintiff's cases from the 1990s to the
8 2000s?

9 A. Well even with false inferences and the junk
10 science, as we saw with Garlock's record in the 1990s,
11 Garlock was still very successful at trial: 92 percent.
12 I think the judge has heard that number lots. So even
13 despite that, Garlock was very successful. The thing
14 that changed in the 2000s was that -- and we've talked
15 about that, the ocean -- the ocean shrunk, even
16 disappeared in some cases. So we still had the bucket
17 and we still had evidence of the bucket; we needed to
18 have the evidence of the ocean so we could demonstrate
19 the bucket in the ocean. And so that -- in cases where
20 we didn't have that evidence, that was the most
21 significant thing.

22 Again, I think we talked about this last Friday
23 when I was up here. Jurors want to figure out what
24 happened. It's not enough for a lot of jurors to know
25 that Garlock's product didn't cause the disease. They

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1 want to know what product did cause the disease. It was
2 important for Garlock to be able to identify thermal
3 insulation as part of its defense.

4 Q. How did the suppression of evidence affect
5 Garlock's trial results and the success of Garlock's
6 bucket in the ocean defense in the 2000s?

7 A. Well we showed this next slide last time to
8 emphasize the 1990s record. You see 2001 to 2010
9 highlighted here. During that decade, Garlock's record
10 was still -- it was still good. It was still -- but to
11 lose 36 percent of the cases is not the kind of record
12 that you wanted to have. It still won 64 percent of the
13 cases in the decades of the 2000s. And obviously, I
14 think we may have a slide that divides that decade into
15 two five-year periods, and I think that's pretty telling
16 as well.

17 You have the first part of the bankruptcy wave,
18 2001 to 2005. Garlock's record was about 50 percent. It
19 won 17 cases to verdict; it lost 15. And so that was
20 going on in the initial part of the bankruptcy wave.
21 Its average verdicts were taking defense verdicts was
22 just a little better. I guess Garlock was winning 53
23 percent during that five year period.

24 Q. So before, when you focused on the 1990s, and we
25 put up Judge Posner's formula, and you were talking about

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1 what was driving those settlements in the 1990s. In this
2 group of trial cases, what -- how did that change the
3 analysis under Judge Posner's formula?

4 A. I think we talked about it some, but it's always
5 good to go back to this formula because it really helps
6 you talk about it. And if I could have that whole
7 formula up there I think it would help me to talk about
8 it.

9 We talked last time about defendant's avoidable
10 costs being the driver of the settlements in the 1990s.
11 Garlock was able to pay low dollar settlements to avoid
12 costs on lots of claims to get rid of the claims that
13 way. What happened as a result of what we've just seen
14 with the evidence disappearing is that suddenly there was
15 at least an illusion of defendant's expected liability in
16 this left-hand box and I think that's key. Because if
17 you look at the components of Judge Posner's formula,
18 it's the compensatory awards share and the likelihood of
19 plaintiff's success.

20 Disappearance in those cases of the evidence about
21 the thermal insulation exposures was key because it
22 affected both the likelihood of plaintiff's success.
23 Garlock no longer had a 92 percent-plus chance of
24 winning. And if it were to lose, it affected the
25 compensatory award share. So now you had to take account

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1 and those cases worked up that way that defendant -- that
2 there was some defendant's expected liability in those
3 cases. In addition, it had a huge impact on the
4 right-hand box because it had a big impact on the cost to
5 defend the cases. So, obviously, the result was that
6 Garlock was willing to pay higher settlement amounts.

7 Q. When you say the right box, you mean left of the
8 defendant's avoidable costs?

9 A. Right. The orange shaded box, the defendant's
10 avoidable costs.

11 Q. There's been some evidence, and I think we heard
12 it when Mr. Turlik was testifying some of the factors
13 that might be considered: The age of the claimant, the
14 jurisdiction, that type of thing. To what extent did
15 those factors come into play when Garlock was thinking
16 about settlements and evaluating whether to settle a case
17 and how much to settle?

18 A. Well, in those cases where there was an illusion,
19 as I called it, of expected liability, it was a real --
20 it was trial risk. I like to say it was an illusion of
21 liability. It was real trial risk. There was real trial
22 risk because of that. Even though we were confident
23 there was no legal liability, there was real trial risk.
24 And when there's real trial risk, those elements are
25 very, very important because they drive the amount of the

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1 verdict. If there's going to be a verdict, it's going to
2 be based on -- it's going to be larger if it's a young
3 claimant. If the claimant was alive at the time the
4 claim was filed. If the claimant has a lot of economic
5 damages, those things become very, very important if
6 there is some -- in our view, as we analyze the case, if
7 there's trial risk presented about what we were talking
8 about.

9 Q. Okay. Now, another slide that the Court has seen
10 before shows the difference in settlement results in
11 Mesothelioma claims from the 1990s to 2000s. Is this
12 reflecting the experience you just described?

13 A. Yes. As you can see, this is the only average
14 Mesothelioma settlement payments. We saw the first part
15 of that through 1999 when the average settlement amounts
16 were from \$2,000 to \$8,500 in that period of time to what
17 happened during and after the bankruptcy wave when those
18 average settlement payments more than doubled early. And
19 as you can see, by the end of the decade, during the
20 bankruptcy wave, they went up by seven times, again,
21 driven by those things that we talked about. Primarily,
22 because all of a sudden now the cost to defend these
23 cases had gone up tremendously.

24 Q. Was that increase in cost of defense, did that run
25 across all cases or just the ones where you were pushed

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1 to trial and had to focus on the absence of the evidence?

2 A. Well it depends on what you mean, Mr. Cassada.

3 Garlock actually experienced that increase in cost only
4 in the cases that were worked up for trial and that it
5 tried. But there was the potential for that kind of cost
6 in any case that it didn't settle that a plaintiff would
7 then take to trial. Obviously, the cost to defend any
8 case had gone up tremendously. That was one -- that was
9 a key motivation for Garlock to settle cases. And deals
10 and to settle early was to avoid those significant costs
11 in all those cases.

12 Q. Now when you were experiencing this problem, and
13 this is -- we've been focused, I take it, on the first
14 half of the decade. Did there come a time when Garlock
15 began to focus on the bankruptcy trust that might be
16 formed from these defendants that had gone into
17 bankruptcy and the relief that those trusts might provide
18 to the disappearance of evidence?

19 A. There did.

20 Q. Talk about that a little bit. Describe when
21 Garlock first started focusing on the potential relief of
22 the trusts.

23 A. Well, we knew -- we knew that these companies were
24 in reorganization. They were in bankruptcy
25 reorganization and that there would come a time when

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1 those companies would be reorganized and would emerge
2 from bankruptcy. And we knew that in connection with
3 their reemergence there would be trusts created that
4 would be created to pay for their liability at least in
5 some part. We were not focused on how much that would be
6 early in the 2000s or know anything much about that other
7 than that evidence will come back. Because eventually
8 they're going to come out of bankruptcy and they're going
9 to start paying claims again.

10 When we retained Dr. Bates in 2004 for several
11 reasons, including helping us and advise us and managing
12 litigation, one thing I became aware of for the first
13 time was there were going to be billions and billions of
14 dollars in those trusts available to pay claims. And
15 therefore, there was going to be a lot of money there
16 would be claimants getting that money. And my assumption
17 was that as a result of that, the claimants' names would
18 once again become the subject of discussion and
19 disclosure in the litigation and Garlock would have
20 access to that, and so things in the system would return
21 to what it had been like when Garlock had showed the
22 bucket in the ocean.

23 And this slide here shows the amount of trust
24 assets that were available to pay claimants. As you can
25 see, early in the 2000s when I know I wasn't, and I'm not

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1 sure how much our team was. But I wasn't that focused on
2 how much money was gonna be there because, as you can
3 see, the trusts were still being formed the
4 reorganizations were happening. By the mid-2000s there
5 was over \$20 billion to pay claimants in those trusts.

6 Q. You also talked Friday about the experience that
7 predominated the 1990s, the nonmalignant claims. But now
8 we've moved to the early 2000s and you're beginning to
9 see the problems with evidence in Mesothelioma cases.
10 Had the nonmalignant litigation problem gone away?

11 A. It had improved significantly. It had become a
12 much less part of the case at least by the sort of latter
13 part of that. We were still focused on it in the first
14 half of the 2000s. In fact, we were very involved in
15 efforts to try to do something about that. We were
16 involved with efforts to try to get the Fair Act enacted,
17 which was a bill pending in front of the Senate that
18 would have answered the Supreme Court's encouragement to
19 do something about the elephantine mass that defied
20 judicial determination. It would have done that by
21 having a national trust fund to which defendants would
22 pay in and it would pay claimants.

23 There was also a medical criteria bill pending in
24 the House of Representatives. And those things were
25 pending all the way into the mid 2000s. So we were

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1 focused on that. We were still -- and I believe all the
2 way until about 2006, still almost half of what and maybe
3 more than half of what Garlock was paying to resolve
4 claims was being paid in low dollar amounts to resolve
5 nonmalignant claims.

6 Q. Did your efforts to get legislation bare fruit?

7 A. Well it depends, again, how you define that.

8 Neither the medical criteria bill that was pending in the
9 House, nor the Fair Act that was pending in the Senate
10 were passed. Neither of those were adopted. So they did
11 raise awareness and they raised a lot of attention about
12 that. And as a result of that, some key states adopted
13 legislation, both Texas and Mississippi, where the
14 largest numbers of nonmalignant claims were pending.
15 They both adopted state legislation that dealt with the
16 nonmalignant claims and put them on dockets where they
17 would not get trial dates and would not be dealt with
18 unless the claimants actually got sick. So that
19 happened.

20 We had judge Janet Jack's decision in the mid-
21 2000s in Corpus Christi, Texas. That also got lots of
22 publicity about the nonmalignants. And so things all
23 together led to a decline in the nonmalignancies. And
24 ultimately, by the end of the decade, they were not a
25 significant part of the litigation.

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1 Q. Okay. Back to the tort system and Mesothelioma
2 claims. Did Garlock begin to go after trust claims in
3 discovery in cases that were being worked up against it?

4 A. Yes, it did.

5 Q. Can you describe what Garlock's experience was in
6 that regard?

7 A. Well, it varied. I think -- I think Mr. Turlik
8 showed a slide that demonstrated a few cases where it got
9 trust discovery and got defense verdicts. And so
10 sometimes it got trust discovery and was successful.
11 Probably more often, at least in that time period, it was
12 not successful in getting those trust claims.

13 And I think I've got a slide that I did to
14 demonstrate what had happened in the three cases where it
15 did get that discovery. We didn't put the names of the
16 cases on here because we didn't want to have to close the
17 courtroom. But as you can see the three cases and, I
18 believe, Mr. Turlik may have talked about these cases.
19 You can see first there was a refusal to produce the
20 claims, the production was ordered. You see the number
21 of the trust claims that were produced in each of those
22 cases. Those trust claims were admitted into evidence,
23 and Garlock got defense verdicts in all three of those
24 cases.

25 Q. Okay. Were these cases the exception or the rule

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1 in terms as Garlock was defending cases through the 2000s
2 and trying to get?

3 A. They were the exception.

4 Q. I might be standing too close to the microphone
5 here.

6 A. I think I'm probably too close. I apologize.

7 Q. Oh, the witness. Okay.

8 Now, were you at this point were you keeping your
9 eye on the progress of the trust, the formation and the
10 bankruptcy cases in this tier and the bankruptcy cases?

11 A. We definitely were -- once we found out how much
12 money was going to be available, we knew it was a matter
13 of time. At least our assumption was it was a matter of
14 time before the evidence about exposure of their products
15 would be available once again in the tort system. And so
16 when that didn't start to happen, we investigated why.

17 Q. So you -- so the trust started paying money. Can
18 we go back to the trust slide? The trust is finally
19 paying money and you began questioning why the evidence
20 hadn't returned the way you expected it to?

21 A. Right. That's right. All that happened -- about
22 the middle of the 2000s we realized there was a lot of
23 money available in the system for the claimants, and
24 claimants were starting to be paid significant dollars.
25 And that evidence wasn't coming back into the system, and

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1 we wanted to know why. So we got -- we investigated why.

2 Q. Did you look at the trust distribution procedures
3 that these new trusts had adopted?

4 A. Well we asked people who were experts on that to
5 do that for us and to get involved and see what was going
6 on with that.

7 Q. What did you learn?

8 A. In a word, we learned that the system was rigged.

9 Q. How so?

10 A. Well, the trust had provisions -- these trust
11 distribution provisions that made the information that we
12 thought was going to be coming back into the system
13 confidential. There was confidentiality provisions.
14 There was what we'll talk about the sole benefit
15 provision. And then there was these deferral withdrawal
16 provisions that would allow the plaintiff to make a
17 claim, withdraw the claim, and keep their place in line.

18 So as we found out, when we finally got
19 discovery, here it became a practice to file claims,
20 withdraw them to defer them to keep their place in line.
21 Wait until the tort claim was over, and then go refile
22 those claims. That became a practice so that we didn't
23 have that information in the tort system. But the one
24 that really galled me the most was the sole benefit
25 provision, and that's up here. It first began appearing

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1 in these trusts in 2007, I believe, right after Garlock
2 got involved in the Pittsburgh Corning and W.R. Grace
3 cases to try to figure out what was going on to see if we
4 could change things about that same time.

5 And this provision was particularly galling. You
6 look at the highlighted part it says, similarly, failure
7 to identify this particular debtor's products and
8 operations in the claimant's underlying tort action, or
9 to other bankruptcy trusts, does not preclude the
10 claimant from recovering from the trust. In other words,
11 the claimant now not only -- not only was that practice
12 happening now, it was invited to happen. You don't have
13 to identify the products of the trust in your underlying
14 tort litigation and you can still come in here to our
15 trust and recover, notwithstanding the fact that you
16 haven't identified the product or that you even denied
17 exposure of the product, you know, in the tort
18 litigation.

19 Q. So did Garlock do anything about these provisions
20 that Garlock perceived as being unfair and rigging the
21 process?

22 A. It did. As I said, the W. R. Grace and Pittsburgh
23 Corning bankruptcy cases, even though those companies had
24 both filed early in bankrupt wave, those two bankruptcies
25 were continuing. They had not yet reorganized. They did

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1 not yet have plans. So Garlock got involved in those
2 cases and objected to these trust distribution
3 provisions, especially this one on the grounds that this
4 was unfair to codefendants still in the trust system. I
5 mean I -- excuse me, still in the tort system who were
6 defending claims that these defendants had once been
7 codefendants in.

8 Now the information about these codefendants was
9 being supplied to trusts, but it didn't have to be
10 shared. And furthermore, the trusts were inviting the
11 information to be inconsistent with the information in
12 the tort system.

13 Q. So moving, again, now back into the tort system.
14 Did Garlock begin to see some success in its greater
15 success in its defenses during the second half of the
16 2000s?

17 A. It did. And this -- we showed this -- this slide
18 a little earlier with the middle row the 2001 to 2005 row
19 highlighted. As you can see, in 2006 to 2010 Garlock had
20 resumed having success closer to what it had had back in
21 the '90s. This shows 13 defense verdicts and two
22 plaintiffs' verdicts. I should explain that it actually
23 had three adverse verdicts in the 2006 to 2010 time
24 period. One of those verdicts, however, was the Moeller
25 case in Pennsylvania where Chief Judge Batchelder of the

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1 Sixth Circuit said, when she overturned that verdict and
2 determined it should never have gone to the jury, that
3 the evidence presented in the case presented our bucket
4 in the ocean -- in fact, she used and coined that term,
5 saying that Garlock's gaskets were a substantial
6 contributing cause of the plaintiff's disease was like
7 saying that a bucket of water added -- was a substantial
8 contributing factor to the volume of the ocean.

9 So in rendering that opinion, she said that that
10 case should have never been allowed to go to the jury.
11 So there were -- when you take that out, there were two
12 plaintiff verdicts in that time period. One of those
13 with the Simpson case that I think has already been
14 discussed some in this trial where there was evidence of
15 insulation exposures and the insulation companies, even
16 though they weren't at trial, were given 85 percent of
17 the allocation of the verdict. Garlock got a two percent
18 allocation in that case. And in that case there was --
19 there were trust claims that, while they weren't allowed
20 to be published to the jury, my understanding is that
21 they were available and the defense counsel had those.

22 Q. Okay. And do you recall that the other case was,
23 the Torres case about which the Court has heard some and
24 that you'll describe later?

25 A. Yes. The other adverse verdict was the Torres

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1 decision in 2009 that continues to be on appeal at the
2 time of this bankruptcy.

3 Q. So Garlock was enjoying greater success in the
4 courtroom. What was Garlock experiencing in the
5 negotiation of settlements?

6 A. Well that was what was so frustrating. Despite
7 the return to a high winning percentage, Garlock -- there
8 was still significant upward pressure, at least leveling
9 pressure on Garlock's settlement demands. In other
10 words, the settlement averages that had been claim
11 climbing in the early 2005 -- 2000, 2005 had continued to
12 rise and had leveled off about 2006, 2007, but they
13 weren't coming down. They had remained at about an
14 average payment amount on paid claims of about \$70,000
15 per Mesothelioma paid claims. And it was frustrating
16 because it was indicative of just how much it cost to
17 defend the cases.

18 It still made a lot of sense to pay \$70,000 to a
19 -- to settle a Mesothelioma case, rather than what was
20 now half a million -- half a billion dollars -- I'm
21 sorry, half a million dollars or more to defend the case.
22 And this graphic shows that very well. Again, we've
23 taken the claimant names all off of here because we
24 didn't want to have to close the courtroom, but we have
25 the slide available with the claimant names. You can see

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1 what it had cost Garlock to defend Mesothelioma claims in
2 the '90s. And why was it not all that expensive for
3 Garlock to defend claims in the '90s? Because the
4 evidence of the dangerous insulation exposures was
5 readily available to Garlock.

6 In fact, the claimant was acknowledging the
7 exposures and presenting those exposures. So it wasn't
8 nearly as expensive for Garlock to defend its product and
9 to win those cases. And we saw how successful it was at
10 winning those cases even at those values even during that
11 time period. As you will recall though, Garlock was
12 still settling claims at those low values \$2,000 to
13 \$8,500 per year average to avoid those low costs.

14 Now it cost half a million dollars or more to
15 defend -- to fully defend the Garlock case. And you see
16 these example of cases that we have here where we have
17 been able to pull the records to see exactly what it cost
18 to defend those cases. To show that it cost from half a
19 million dollars -- I have to admit even I was shocked
20 that we spent \$1.2 billion -- I'm sorry, \$1.2 million to
21 resolve -- to get that one case to verdict. But you can
22 see because those costs were so high there was still a
23 lot of incentive for Garlock to resolve the cases by
24 settlement and not by trial.

25 Q. Can you explain why you wouldn't just settle these

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1 cases like the last case for the 1.3? Do the trials have
2 consequences to the settlements of other cases?

3 A. Sure. We call it and I think we talked about this
4 last Friday. We talked about these cases that were
5 worked up for trial by the claimants. We talked about
6 them and referred to them, at least we did, the Garrison
7 guys and I referred to them as driver cases. They were
8 worked up for trial to try to drive up Garlock's
9 settlement amounts.

10 If a plaintiff's law firm was getting \$20,000 for
11 Mesotheliomas from Garlock and they thought they should
12 be getting more, well, the way to do that was to create a
13 Garlock-targeted case. Take Garlock to trial,
14 demonstrate some trial risk in that case through the ways
15 that we talked about before. Make Garlock go to expenses
16 to defend that case so that Garlock would decide this is
17 not an affordable proposition. We can't do that. We
18 would prefer to pay more in settlement than to spend all
19 this money defending the cases. So those cases drove up
20 the amount that Garlock was willing to settle to pay to
21 settle. Not only that case, but the other cases that
22 that law firm would have. It was -- I will acknowledge
23 that it was a very successful strategy for the
24 plaintiffs' firms.

25 Q. Okay. Let's step back and take a look at

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1 Garlock's settlement experience. You've talked about how
2 settlement values increased over time. Can you summarize
3 how settlement values were distributed historically
4 across the population of claims that Garlock actually
5 settled?

6 A. Yes. Yes, I can. I've prepared some slides to do
7 that. I think before we get into these slides though, I
8 think it's important to understand their significance.
9 When the committee and the FCR have talked about
10 claimants in this case and the number of claimants and
11 the dollars paid, they create a visual picture of
12 thousands and thousands of Mesothelioma claimants who are
13 receiving significant dollars from Garlock and who are no
14 longer receiving those significant dollars from Garlock
15 and making it sound like we've got a huge group of folks
16 who are no longer getting these large dollars. That's
17 just not the case, and this shows that.

18 I've prepared this to show and to allow it to be
19 easily converted to percentages, sort of, for every
20 hundred Mesothelioma claimants who sued Garlock. So all
21 time over time, for every hundred Mesothelioma claimants
22 that Garlock faced, and there were 22,600 of those in
23 total. But for every 100 of those, 27 received no
24 payment from Garlock. Another 55 received between \$1 and
25 \$25,000. In other words, if you add those two together,

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1 82 percent, 82 out of every hundred Mesothelioma
2 claimants who made a claim against Garlock received
3 \$25,000 or less in payment. Again, you can see that
4 those -- those were what we talked about that were driven
5 exclusively by cost avoidance.

6 The next category there were 17 of those hundred.
7 So 17 percent who got a payments between \$25,000 and \$1
8 and \$250,000. So as you saw earlier, more significant
9 payments but still below at least what Garlock's cost to
10 defend the cases were in the latter half of the 2000s.
11 One claimant for every hundred, only one claimant, and
12 that in total is 251 claimants all time. 251 claimants
13 all time against Garlock out of that -- out of the 22,600
14 received more than \$250,000 from Garlock.

15 Many of those, those driver cases we talked about.
16 And I thought that was important for us to understand,
17 especially in light of how in its opening the Committee
18 tried to make it sound like the number of claims, the
19 number of cases in which Garlock has discovered this
20 evidence concealment, tried to make that seem like such a
21 small percentage of the total. And when you realize that
22 only 251 claimants all time received more than \$250,000
23 from Garlock, that puts that in perspective.

24 Q. Let me ask you a question then about the driver
25 case. So, the -- that might be a driver case the way

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1 that you described it. The driver case -- cases also
2 affect settlements at the lower ranges?

3 A. Sure. We talked about that. The purpose of a
4 driver case was to create risk, to create trial risk.
5 And again, I think I described it as an effective
6 strategy in order to get Garlock to pay larger
7 settlements on that firm's whole group of cases. Whether
8 it be in a year or whether it be in a longer term deal,
9 they were used to drive up those settlement values
10 because. Not only did they create the cost and the risk
11 in that case but they've created the possibility that
12 those same costs, the same level of costs, would have to
13 be absorbed in other cases like that unless Garlock
14 settled those cases and avoided those costs.

15 Q. The committee and FCR have been focusing on the
16 last five years. As you pointed out, they use averages
17 in those periods of time to drive their estimation
18 results. Can you tell the Court how settlements were
19 allocated during the last five year time period?

20 A. Yeah. For the same reason, I did this same
21 analysis for the time period of those last five years,
22 2006 to 2010, to demonstrate what was going on with
23 claimants even during this time period that I think we
24 referred to as the "steroids period" earlier. And
25 stealing a metaphor from -- I believe Mr. Swett

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1 attributed it to Mr. Finch. But we described it as the
2 "steroids period." And I want to demonstrate that even
3 during the steroids period it was still about a small
4 number of driver cases that were driving the settlement
5 results and this demonstrates it.

6 In the 2006 to 2010 time period, for all the
7 resolutions of Mesothelioma claim, 47 out of a hundred.
8 For every hundred, 47. So 47 percent -- and these were
9 cases that were resolved. This doesn't include the cases
10 that were pending at the time of filing. These are cases
11 that were resolved in that five year period, 47 percent
12 -- 47 out of every hundred received no payment from
13 Garlock. Another 25 received between \$1 and \$25,000.
14 So, again, 72 out of a hundred -- 72 percent received a
15 resolution from Garlock of \$25,000 or less.

16 That next category, 26 out of a hundred, received
17 \$25,000 to \$250,000. And for the reason you stated
18 earlier in your in your question, Mr. Cassada, the
19 averages in that group were higher, that folks getting
20 from \$25,000 to \$250,000 because they were being driven
21 along. They were sort of the passenger cases being
22 driven along with the driver cases and they were getting
23 more of the money.

24 Now instead of one case per 100, two cases per 100
25 received more than \$250,000 in resolution from Garlock.

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1 The next slide shows how many total cases that was. In
2 that time period there were over 7,700 Mesothelioma
3 claimants. And of those 7,700, only 161, 161 claimants,
4 received more than \$250,000 in a Garlock payment. And if
5 we --

6 Q. Excuse me. Were those 7,736, those were claims
7 that were resolved?

8 A. Those were claims resolved in that five year
9 period, 2006 to 2010, Mesothelioma claims resolved in
10 that period of time.

11 Q. So that 161 -- we talked about the RFA list cases.
12 That's the 205 or so cases that the judge had heard about
13 last week and ordered Garlock to produce MEAs for. How
14 many of those RFA cases are among the 161?

15 A. In that list of cases where there has been
16 specific identified inconsistent exposure evidence, 72 of
17 those cases are among the 161 that received more than
18 \$250,000 in that time period. So that's about 45 percent
19 of the cases that received more than \$250,000 in that
20 time period received -- 45 percent of the cases that
21 received that amount are on that list where there is
22 inconsistent exposure evidence. And I don't want to
23 imply that that means the rest of those cases don't
24 potentially have unidentified exposures and inconsistent
25 exposures. Just of the ones in that group, because there

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1 are many of those cases that we don't know about. We
2 don't have the complete record on, but 72 of those are on
3 that list of claims.

4 Q. You talked about there being evidence of omissions
5 for those 72. Can you describe what evidence Garlock had
6 access to?

7 A. Well, the Court will recall that Garlock got full
8 discovery and detailed access only on 15 designated cases
9 from some designated law firms. For the rest of the
10 cases Garlock's discovery was limited to trust filings
11 with the DCPF trust facility in Delaware, which included
12 claims that would have been filed against ten trusts.
13 Among them, some of the significant trusts for
14 insulation, dangerous insulation products.

15 And also, they had ballot information from a
16 number of ongoing previous and on going bankruptcies that
17 were available. So the comparison for most of those
18 claims was against just those two sources. For those 15
19 designated claims with those designated law firms, it was
20 full discovery about not only those trusts but other
21 trusts that had been -- where claims had been made.

22 Q. So when there's talk about there being just a very
23 small number of claims where Garlock has provided a lot
24 of detail about nondisclosures, we're talking about a
25 relatively small number of claims that Garlock actually

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1 got discovery on?

2 A. We're talking about a relatively small number of
3 claims Garlock got discovery on. We're also talking
4 about a small number of claims that were worked up for
5 trial where this kind of discovery became very, very
6 important in connection with the trial risk presented
7 that we talked about earlier. Again, most of the --
8 during all these periods a large percentage of these
9 claims are being resolved in order to avoid the costs
10 that we showed earlier that come about when you do have
11 to try one of these cases. So a large majority of these
12 cases were resolved to avoid costs.

13 The resolution cost for those went up because of
14 the evidence -- I'm kind of at a loss for words, but the
15 evidence profile of the cases that did get worked up for
16 trial. All of a sudden Garlock was getting targeted in
17 those cases, and the evidence that it had used
18 successfully in the past to demonstrate the ocean was not
19 available like it had been. Now Garlock still had
20 success, and we saw that it had success, but that success
21 was at significantly greater cost. And there is
22 absolutely no question that there was also trial risk
23 presented in those cases.

24 Q. Okay. Focusing on the 205 cases has Garlock
25 undertaken to determine what the level of omission was

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1 from the DCPF trust and the ballot information it
2 obtained?

3 A. It has. And this slide summarizes that data. It
4 demonstrates that for the 205 RFA cases and again just to
5 clarify here. The Court may recall there were 210 cases
6 on that RFA list. 205 of them were Mesothelioma cases.
7 So that's why this is about the Mesothelioma cases. With
8 that limited discovery, Garlock has determined that on
9 average there were 8.9 -- 8.9 exposure -- I'm sorry.
10 Companies where exposures were demonstrated by the trusts
11 and the ballots that were not present in the underlying
12 tort discovery. And on average, 4.4 of those omissions
13 were insulation companies.

14 And, you know, I guess I should, as an aside, say
15 that Garlock spent millions of dollars with Bates White
16 to develop a detailed analytical database to comb through
17 not only the information received from the trust but the
18 information in discovery documents to demonstrate and to
19 find what these level of omissions was. So that was --
20 and then that information was cross-checked by Robinson
21 Bradshaw to make sure those numbers were verified. So
22 that's on the RFA cases.

23 On the designated plaintiff cases where Garlock
24 received full discovery on average, that discovery
25 demonstrated there were 18.9 average omissions with over

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1 13 of those omissions being omissions of exposure
2 evidence about insulation company exposures.

3 THE COURT: I think we need to break for the day.

4 MR. CASSADA: We were actually just reaching a
5 point where we were maybe, perhaps, going into
6 confidential information. So this probably is a good
7 breaking point.

8 THE COURT: Let's retire for the day.

9 MR. SWETT: Your Honor, I have a request. We have
10 had a disagreement with the debtors concerning the
11 production of slides already used. It would be very
12 helpful and facilitate a crisp examination when
13 Mr. Magee comes back if we could have these slides to
14 study. You can't really take in all that much
15 information from a glance. And it would seem to be
16 appropriate for cross-examination for us to have access
17 to them to prepare.

18 THE COURT: I think that's a fair request. Let's
19 each of you start swapping your slides with one another
20 kind of as we go along.

21 MR. CASSADA: Yes, Your Honor. The position we
22 had taken is that we would provide the slides after the
23 witness' direct testimony.

24 THE COURT: Well let's go ahead and do it now.

25 MR. CASSADA: We will do so.

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1 THE COURT: And they'll do the same.

2 MR. SWETT: Yes.

3 THE COURT: Okay Mr. Finch.

4 MR. FINCH: May I have one housekeeping matter,
5 Your Honor?

6 THE COURT: Yes.

7 MR. FINCH: I have here copies of ACC exhibits 3,
8 4 and 5 which we offered during the testimony of some of
9 Garlock's medical sciences witnesses. I had given a
10 wrong version to the court reporter. So just ACC-3 is a
11 Garlock MSDS. ACC-4 is another Garlock MSDS. ACC-5 is
12 the Manville document.

13 THE COURT: We will accept those.

14 MR. FINCH: Another issue Your Honor as relates to
15 the rebuttal medical science case. We've heard an awful
16 lot -- you've heard as much as you would hear in an
17 asbestos personal injury case at the present time, except
18 there's not a jury in the box and there is not a dying
19 man on the stand. I would suggest there is no basis for
20 rebuttal. However, they have eight medical sciences
21 witnesses that have been listed as rebuttal witnesses. I
22 think it's entirely fair, given Mr. Frost and Mr.
23 George and I have many other clients in many other cases,
24 that Garlock tell us which two they're going to call and
25 give us an approximate timeframe when they're going to

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1 call them. I think it's ridiculous to require us to
2 prepare cross-examination outlines for eight people, when
3 there is no possible way they could get that done in the
4 time the Court has allotted to try this case.

5 THE COURT: Can you answer that question?

6 MR. CASSADA: I'll let Mr. Harris be more
7 specific. But I will say that we are -- we understand
8 the Court is limiting the time period for the trial.
9 We're reserving our right to call all our witnesses
10 because we think they're important. It probably will be
11 the case that we will make offers of proof for witnesses
12 that don't get to testify. But it may -- we've got to
13 understand exactly how much time we're going to have and
14 make decisions about which witnesses we can call. I'll
15 let Mr. Harris talk about our schedule.

16 MR. HARRIS: As I told Mr. Finch before, at the
17 last break, that we don't know for sure who we're going
18 to call. We thought by tomorrow we could probably narrow
19 it down to three, maybe four. But we -- we fully
20 understand we may not have enough time of the Court's
21 time to call that many, but we could at least narrow the
22 list down that way. But what we would anticipate though
23 in rebuttal are very short directs maybe, you know, one
24 of them may be you know 15, 20 minutes. We'll just try
25 to present that evidence to the Court that we think is

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1 most important.

2 THE COURT: All right.

3 MR. FINCH: Your Honor, in response to that. Just
4 because they put on a 15 minute direct doesn't mean I
5 might not want to cross them for two hours or something.
6 I am happy to report to the Court that my client in the
7 case I have set for trial on August 12 has resolved his
8 differences peacefully with the last remaining defendant
9 as to which he is gratified. So, I am available.

10 But I do think it's entirely fair for them to say,
11 okay it's going to be these two and to let us know that
12 by, say, Friday night or Saturday. They've seen our
13 entire case. I would submit, respectfully, there's not
14 any rebuttal to this and they ought to be able to tell
15 us.

16 THE COURT: All right. Let's do the best you can
17 with that. Try to get it down to whatever you can
18 tomorrow. And then as soon as you know what you're going
19 to do, let them know.

20 MR. HARRIS: Thank you, Your Honor.

21 MR. FINCH: Thank you, Your Honor. May I just
22 approach the bench?

23 THE COURT: Yes. All right. We'll be back at
24 9:30 in the morning.

25 (Off the record at 5:35 p.m.)

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CERTIFICATE

I, Tracy Rae Dunlap, RMR, CRR, an Official Court Reporter for the United States District Court for the Western District of North Carolina, do hereby certify that I transcribed, by machine shorthand, the proceedings had in the case of IN RE: GARLOCK SEALING TECHNOLOGIES, LLC, et al, Bankruptcy Case No. 10-BK-31607, on August 1, 2013.

In witness whereof, I have hereto subscribed my name, this 2nd day of August 2013.

___/S/___Tracy Rae Dunlap___
TRACY RAE DUNLAP, RMR, CRR
OFFICIAL COURT REPORTER